

1 UNITED STATES DISTRICT COURT  
 2 EASTERN DISTRICT OF NORTH CAROLINA  
 3 EASTERN DIVISION

4 UNITED STATES OF AMERICA, - Docket No. 4:20-cr-115-FL-1  
 5 Plaintiff, - New Bern, North Carolina  
 6 v. - January 20, 2023  
 7 PATRICK FEDAK, - Sentencing  
 8 Defendant. -  
 9 -----

10 PUBLIC TRANSCRIPT OF SENTENCING HEARING  
 11 BEFORE THE HONORABLE LOUISE WOOD FLANAGAN  
 12 UNITED STATES DISTRICT JUDGE.

13 (PURSUANT TO STANDING ORDER 22-SO-1,  
 14 PORTIONS OF ALL CHANGE OF PLEA AND SENTENCING  
 15 TRANSCRIPTS ARE RESTRICTED)

16 APPEARANCES:

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Proceedings recorded by mechanical stenography,  
 transcript produced by notereading.

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1 (Commenced at 10:43 a.m.)

2 THE COURT: Counsel, I'm going to invite you  
00:00:05 3 to correct my pronunciation of your client's surname.

00:00:12 4 Fedak? Fedak?

00:00:14 5 MS. BRENNAN: Fedak.

00:00:15 6 THE COURT: Mr. Fedak, have you read the  
00:00:19 7 presentence report?

00:00:19 8 THE DEFENDANT: Yes, ma'am.

00:00:20 9 THE COURT: Good. Have you had enough time  
00:00:21 10 to talk with your attorney to be ready today to be  
00:00:24 11 sentenced?

00:00:25 12 THE DEFENDANT: Yes, ma'am.

00:00:25 13 THE COURT: All right. Very good. Thank  
00:00:26 14 you. You can be seated.

00:00:34 15 I was disappointed to learn that the  
00:00:40 16 defendant didn't stay with his in-laws on December 26th,  
00:00:48 17 but instead drove to Raleigh and stayed with Ms. Pruitt,  
00:00:56 18 when the Court had a motion pending in front of it  
00:01:01 19 whether or not he would have permission to visit Ms.  
00:01:04 20 Pruitt over the New Year's, which I ultimately denied.

00:01:11 21 And the probation officer called your  
00:01:15 22 mother-in-law and wanted to know how things went over  
00:01:20 23 Christmas, and she indicated that third night you  
00:01:22 24 weren't with them.

00:01:25 25 And the defendant lied to the probation

00:01:30 1 officer. He said he was at his house.

00:01:32 2 Of course, we can figure out where he is  
00:01:34 3 because he's still wearing the location monitoring, or  
00:01:37 4 where he's not, and he was not at his house.

00:01:40 5 And that's when the defendant admitted going  
00:01:45 6 to see Ms. Pruitt in Raleigh.

00:01:50 7 And apparently Mr. Fedak says he was a  
00:01:55 8 little confused with the language that was used to give  
00:02:03 9 you those three nights with your in-laws and your  
00:02:09 10 children and your wife, or soon-to-be ex-wife.

00:02:14 11 Which kind of is similar to what kind of got  
00:02:20 12 you in this position, which is reading things, thinking  
00:02:27 13 about things, and justifying your actions in a way that  
00:02:35 14 brings you what you want.

00:02:41 15 And you used taxpayers' resources to bring  
00:02:45 16 you a lot of things of what you want or wanted, or what  
00:02:52 17 people in the service wanted, that accrued back to you  
00:02:57 18 in terms of your sense of esteem. Supposedly this car  
00:03:07 19 brought your father pleasure, so it looks like that was  
00:03:12 20 some form of justification that you used to steal the  
00:03:16 21 car.

00:03:21 22 So for a lot of reasons the probation office  
00:03:24 23 doesn't think you've accepted responsibility.

00:03:29 24 And we all know about you burying the  
00:03:32 25 weapons in the dirt, which is an obstruction

00:03:40 1 enhancement.

00:03:43 2 There's a lot to unravel here.

00:03:46 3 There's a lot of nice letters that have been  
00:03:50 4 sent of support. And a lot of work has gone into  
00:03:57 5 advancing the defendant's position at sentencing for a  
00:04:01 6 time served sentence that manifests itself in about  
00:04:07 7 three-quarters of an inch of paperwork filed by the  
00:04:11 8 Federal Public Defender. A very thoughtful memorandum,  
00:04:20 9 these letters, psychological evaluation.

00:04:31 10 Well, Ms. Brennan, where do you think we  
00:04:35 11 should begin to unravel, with the first goal being to  
00:04:39 12 decide what the advice is of the sentencing guidelines?

00:04:42 13 MS. BRENNAN: Your Honor, I drafted pretty  
00:04:48 14 detailed objections. And I really think from hearing  
00:04:51 15 what the Court opened with you have a very good handle  
00:04:53 16 on exactly where we are, what the nature of our  
00:04:57 17 objections are. I'd be happy to answer any questions  
00:05:00 18 that the objections have given the Court.

00:05:04 19 THE COURT: Okay. I appreciate that.

00:05:12 20 I know I've got some questions, but why  
00:05:14 21 don't we hear from Ms. Kocher.

00:05:15 22 MS. KOCHER: Your Honor, in response to the  
00:05:17 23 objections, the government would put on evidence through  
00:05:19 24 testimony --

00:05:19 25 THE COURT: All right.

00:05:21 1 MS. KOCHER: -- and would call Special Agent  
00:05:25 2 Peter Salomon with the Naval Criminal Investigative  
00:05:31 3 Service.

00:05:32 4 THE COURT: Please come forward.

00:05:36 5 THE CLERK: You may go to the witness stand.  
00:05:44 6 If you would please raise your right hand, state and  
00:05:48 7 spell your name.

00:05:50 8 THE WITNESS: Peter Solomon, P-e-t-e-r  
00:06:07 9 S-a-l-o-m-o-n.

00:06:07 10 (Whereupon the witness was sworn by the  
00:06:09 11 clerk.)

00:06:09 12 THE CLERK: You may be seated.

00:06:10 13 - - -

00:06:10 14 PETER SALOMON, DIRECT EXAMINATION

00:06:11 15 BY MS. KOCHER:

00:06:11 16 Q. Sir, you're a special agent with Naval Criminal  
00:06:15 17 Investigative Service; is that correct?

00:06:16 18 A. Yes.

00:06:18 19 Q. Did you have a role in the investigation of  
00:06:21 20 Defendant Fedak?

00:06:22 21 A. Yes.

00:06:22 22 Q. Did you have the opportunity to debrief Mr. Fedak  
00:06:25 23 following a plea agreement here in this courtroom in  
00:06:30 24 June of 2022?

00:06:31 25 A. Yes.

00:06:31 1 Q. I would like to focus on that interview  
00:06:33 2 ultimately. But if you would, first, just -- the Court  
00:06:37 3 has expressed understanding of the case, but just very  
00:06:40 4 briefly describe how and when it came to NCIS attention.

00:06:45 5 A. The investigation was initiated in December of  
00:06:49 6 2019 after Command noticed that Mr. Fedak had ordered  
00:06:54 7 items through GSAXcess, which is a government service  
00:06:58 8 website where people can acquire -- or government  
00:07:01 9 agencies can acquire no-cost items for agency-to-agency  
00:07:05 10 transfer. During the course of that investigation we  
00:07:07 11 uncovered that there were additional items ordered from  
00:07:12 12 both North Carolina and California to include a vehicle,  
00:07:17 13 iPhones, firearms, and things of that nature.

00:07:20 14 Q. You mentioned California. How does California  
00:07:23 15 come into the picture?

00:07:24 16 A. California comes in because that is the previous  
00:07:27 17 duty station of Mr. Fedak prior to transferring to North  
00:07:31 18 Carolina.

00:07:31 19 Q. And so at the time of the investigation and going  
00:07:35 20 forward he was stationed at Marine Corps Air Station  
00:07:39 21 Cherry Point here locally?

00:07:40 22 A. Yes.

00:07:42 23 MS. KOCHER: If I may approach, Your Honor?

00:08:03 24 THE COURT: Yes.

00:08:03 25 BY MS. KOCHER:

00:08:04 1 Q. I hand you what's been marked Government's  
00:08:06 2 Exhibits 1, 2, and 11.

00:08:08 3 Turning your attention first to Government's  
00:08:10 4 Exhibit 1, do you recognize that?

00:08:12 5 A. Yes.

00:08:12 6 Q. And what is that?

00:08:13 7 A. This is a letter that NCIS received for the  
00:08:17 8 notice of representation for, at the time, Captain  
00:08:21 9 Patrick Fedak.

00:08:23 10 Q. So this would be in regard to any military  
00:08:25 11 investigation or proceeding against him?

00:08:28 12 A. Yes.

00:08:28 13 Q. So the letter basically says that he had retained  
00:08:32 14 counsel for the purpose of that proceeding; is that  
00:08:35 15 correct?

00:08:35 16 A. Yes.

00:08:36 17 Q. At the interview -- so now turning to the  
00:08:42 18 debrief. Did Mr. Fedak discuss the titling of the  
00:08:48 19 Mercedes vehicle that you referenced earlier as a  
00:08:51 20 vehicle that he obtained through GSAXcess?

00:08:54 21 A. Yes.

00:08:55 22 Q. If you would look at what's been marked  
00:09:02 23 Government's Exhibit 2.

00:09:02 24 Do you recognize that?

00:09:05 25 A. Yes.



00:09:05 1 Q. And what is that?

00:09:07 2 A. This is records that we received from the  
00:09:10 3 California Department of Motor Vehicles pertaining to  
00:09:14 4 the titling of that vehicle and additional California  
00:09:19 5 DMV records.

00:09:20 6 Q. Just to remind the Court briefly, this involves a  
00:09:25 7 GSAXcess requisition by Mr. Fedak for a Mercedes SUV?

00:09:30 8 A. Yes.

00:09:32 9 Q. How did the SUV end up on the GSAXcess website?  
00:09:32 10 Do you know?

00:09:37 11 A. The vehicle was seized as part of another federal  
00:09:39 12 agency investigation and ultimately was held by that  
00:09:43 13 agency before being placed on GSAXcess.

00:09:46 14 Q. Do you have any reference as to the timeframe  
00:09:51 15 that that agency or other federal agencies held that  
00:09:53 16 vehicle before it was posted on GSAXcess?

00:09:56 17 A. Yes. I believe the timeframe was between 2009 to  
00:09:59 18 2010 when the vehicle was seized, and it would have been  
00:10:01 19 posted and acquired in the 2019 timeframe.

00:10:04 20 Q. In, I'm sorry?

00:10:07 21 A. The 2019 timeframe is when Mr. Fedak acquired it.

00:10:11 22 Q. If I could turn your attention to the page that  
00:10:13 23 is stamped number 884. What is that document?

00:10:23 24 A. This document is the Application For Duplicate Or  
00:10:26 25 Transfer of Title.

00:10:29 1 Q. And in the interview, the debrief with Mr. Fedak,  
00:10:35 2 did you reference this particular document in your  
00:10:38 3 inquiry of him in regard to the Mercedes?

00:10:40 4 A. Yes.

00:10:41 5 Q. And at the inquiry did you show him this  
00:10:45 6 document?

00:10:46 7 A. Yes.

00:10:49 8 Q. What specifically was asked of him in regard to  
00:10:52 9 this document?

00:10:52 10 A. He was asked whether or not he signed this  
00:10:55 11 document and whether or not he signed the name for  
00:10:59 12 Antonio Gonzalez on the document.

00:11:03 13 Q. Is Antonio Gonzalez, to your knowledge, a real  
00:11:07 14 person?

00:11:07 15 A. Yes.

00:11:07 16 Q. Who was that?

00:11:08 17 A. He was the individual who the vehicle was seized  
00:11:10 18 from as part of the previous law enforcement  
00:11:12 19 investigation.

00:11:14 20 Q. Virtually ten years prior to this?

00:11:16 21 A. Correct.

00:11:19 22 Q. How did he answer those questions?

00:11:21 23 A. He provided that he signed this document for the  
00:11:24 24 Patrick Fedak. He provided that he wrote in the name  
00:11:27 25 Antonio Gonzalez, but he denied signing the name Antonio

00:11:32 1 Gonzalez on these forms.

00:11:34 2 Q. Did he explain or know who had signed for Mr.  
00:11:36 3 Antonio Gonzalez?

00:11:38 4 A. He theorized that someone at the California DMV  
00:11:41 5 had signed when he submitted it.

00:11:44 6 Q. I noticed this page bears a notary public seal  
00:11:48 7 here from the State of North Carolina. Did you have  
00:11:50 8 the opportunity to investigate that?

00:11:52 9 A. Yes.

00:11:52 10 Q. And what did you learn?

00:11:53 11 A. The notary, Ms. Lisa Kuhl, she is a notary on  
00:11:58 12 Marine Corps Air Station Cherry Point. We were able to  
00:12:00 13 review her notary log, and she notarized this document  
00:12:04 14 on March 10 of 2020.

00:12:06 15 Q. And she had the records to show that?

00:12:08 16 A. Yes.

00:12:10 17 Q. Did you give him the opportunity during the  
00:12:13 18 debrief to correct his statement in regard to this title  
00:12:17 19 application?

00:12:18 20 A. Yes. This was brought up again, and that's when  
00:12:21 21 we pulled up on the computer the document and physically  
00:12:24 22 showed it to him.

00:12:25 23 Q. And did he maintain that he did not sign Antonio  
00:12:28 24 Gonzalez's signature on that?

00:12:30 25 A. Yes.

00:12:31 1 Q. If I can turn your attention to the page stamped  
00:12:37 2 892 in this same Government's Exhibit 2.

00:12:41 3 What is that document?

00:12:45 4 A. This document is the bill of sale.

00:12:49 5 Q. For what?

00:12:52 6 A. It is a bill of sale showing that the Mercedes in  
00:12:55 7 question was sold by Antonio Gonzalez to Patrick Fedak  
00:13:01 8 on November 14, 2019.

00:13:04 9 Q. And is that day relevant to the receipt of the  
00:13:08 10 Mercedes?

00:13:09 11 A. Yes, it correlates to the GSA documents for the  
00:13:13 12 acquisition of the vehicle.

00:13:14 13 Q. All right. And what else does this bill of sale  
00:13:17 14 inform the California Department of Motor Vehicles?

00:13:20 15 A. It informs that the -- well, there's the names,  
00:13:27 16 both Antonio Gonzalez and Patrick Fedak on it with  
00:13:31 17 signatures. It's also from the seller certified under  
00:13:34 18 penalty of perjury under the laws of California.

00:13:37 19 Q. And is there a sale amount on this document?

00:13:40 20 A. Yes. The sale amount shows \$1,500.

00:13:53 21 Q. Did you have the opportunity to compare the facts  
00:13:55 22 on this bill of sale to statements made by government  
00:13:59 23 officials who were present when Mr. Fedak acquired the  
00:14:03 24 Mercedes?

00:14:05 25 A. Yes.

00:14:06 1 Q. And what can you tell us about their statements  
00:14:08 2 in regard to the facts on this bill of sale?

00:14:10 3 A. The facts of this bill of sale were not accurate  
00:14:15 4 per the law enforcement agency.

00:14:20 5 Q. If I can have you turn now to page 894.

00:14:30 6 What is this document?

00:14:31 7 A. This document is an application for temporary  
00:14:34 8 smog exemption for a vehicle located out of state.

00:14:39 9 Q. And you noted the last document, the bill of  
00:14:41 10 sale, was signed by purportedly Mr. Gonzalez and Mr.  
00:14:48 11 Fedak both under penalty of perjury. Does this  
00:14:51 12 document bear that same certification?

00:14:53 13 A. Yes.

00:14:55 14 Q. Just at about the third from the top of the page,  
00:15:02 15 the street address for Mr. Fedak is listed. And below  
00:15:05 16 that appears to be some type of statement of facts. Do  
00:15:08 17 you see where I'm referencing?

00:15:09 18 A. Yes.

00:15:10 19 Q. What does it say there?

00:15:11 20 A. It says that the vehicle is temporarily located  
00:15:15 21 out of state because it was inoperable and they no  
00:15:18 22 longer lived in California.

00:15:21 23 "I am currently active duty military, and this  
00:15:24 24 vehicle was bought when I was stationed in California.  
00:15:27 25 It will not be reregistered in California where we no

00:15:31 1 longer live in that state and currently have no plans to  
00:15:34 2 return."

00:15:35 3 Q. All right. And just looking -- it is true that  
00:15:37 4 he no longer lived in California at this time; is that  
00:15:40 5 correct?

00:15:40 6 A. Yes.

00:15:41 7 Q. And that he was currently active duty military?

00:15:44 8 A. Yes.

00:15:46 9 Q. What about the assertion that the vehicle was  
00:15:48 10 bought when he was stationed in California? Did this  
00:15:52 11 activity, this acquisition of this Mercedes, occur while  
00:15:56 12 he was stationed in California?

00:15:57 13 A. No.

00:15:57 14 Q. How do you know that?

00:15:58 15 A. Per the GSA records, the acquisition documents,  
00:16:01 16 and the vehicle transfers.

00:16:02 17 Q. And his military records?

00:16:04 18 A. Yes.

00:16:05 19 Q. Did he have a temporary duty station in  
00:16:09 20 California during the time period that he acquired this  
00:16:12 21 vehicle?

00:16:12 22 A. Not that I'm aware of.

00:16:14 23 Q. Do you know then if he took leave or was absent  
00:16:20 24 from the military under other circumstances?

00:16:22 25 A. Yes, he took leave from his command in order to

00:16:26 1 travel down to pick up the vehicle with his dad.

00:16:28 2 Q. So annual leave?

00:16:30 3 A. Yes.

00:16:32 4 Q. And that was from Marine Corps Air Station Cherry  
00:16:36 5 Point?

00:16:36 6 A. Yes.

00:16:41 7 Q. And did you happen to compare the signatures of  
00:16:44 8 Mr. Fedak on the three pages we have looked at, page  
00:16:48 9 882, page 884, 892, and 894?

00:16:55 10 A. Yes.

00:16:56 11 Q. And what did you perceive about Mr. Fedak's  
00:16:58 12 signatures?

00:17:00 13 MS. BRENNAN: I'd object, Your Honor, unless  
00:17:02 14 he has some special training in handwriting analysis.  
00:17:05 15 Your Honor, I don't believe he's qualified to testify as  
00:17:08 16 an expert regarding signatures.

00:17:10 17 THE COURT: Let's hear what his answer is.

00:17:13 18 A. The signatures look similar.

00:17:18 19 THE COURT: Okay. I'll let you test that on  
00:17:20 20 cross, of course.

00:17:24 21 BY MS. KOCHER:

00:17:26 22 Q. And in regard to Mr. Gonzalez's signatures?

00:17:30 23 A. The signatures shown for Mr. Gonzalez --

00:17:35 24 MS. BRENNAN: Same objection, Your Honor.

00:17:36 25 THE COURT: Overruled.

00:17:38 1 A. -- appear similar as well.

00:17:40 2 BY MS. KOCHER:

00:17:40 3 Q. Now, a page that we've not looked at, there is an  
00:17:48 4 application for registration of a new vehicle in the  
00:17:52 5 package. And this is at page stamped 900.

00:17:55 6 A. Yes.

00:17:56 7 Q. Did you have the opportunity to look -- well,  
00:17:59 8 first of all, what is this?

00:18:01 9 A. This is the application for registration of a new  
00:18:05 10 vehicle.

00:18:06 11 Q. So what is it?

00:18:08 12 A. It is the application for new vehicle when the  
00:18:11 13 vehicle was initially purchased by Antonio Gonzalez in  
00:18:16 14 2009.

00:18:17 15 Q. Does this application purport to contain the  
00:18:19 16 signature of Mr. Gonzalez?

00:18:21 17 A. Yes.

00:18:22 18 Q. And where is that signature located?

00:18:24 19 A. That signature is located under applicant's  
00:18:28 20 certification towards the middle of the page dated  
00:18:31 21 4-11-2009.

00:18:33 22 Q. It's at the very bottom of the page?

00:18:35 23 A. It's also on the very bottom of the page,  
00:18:38 24 correct.

00:18:38 25 Q. And to your perception, not putting you forth as



00:18:42 1 an expert, but to your perception does that signature  
00:18:45 2 appear to be similar in nature to the other two  
00:18:49 3 signatures of Antonio Gonzalez presented in Government's  
00:18:52 4 Exhibit 2?

00:18:52 5 A. No.

00:19:05 6 Q. Let's turn to the burial of the firearms. At  
00:19:10 7 this debrief did you have the opportunity to speak with  
00:19:14 8 Mr. Fedak about the burial of the firearms?

00:19:18 9 A. Yes.

00:19:18 10 Q. And what did he tell you?

00:19:22 11 A. He provided that he had buried the firearms  
00:19:25 12 earlier and that he was going back to check on them  
00:19:30 13 before turning them in as part of his post guilty plea  
00:19:35 14 proffer.

00:19:35 15 Q. Did he give you a timeframe for that earlier  
00:19:38 16 burial that he informed you of?

00:19:40 17 A. Yes. He provided it would have been after he was  
00:19:43 18 told he could no longer possess weapons by the Court.

00:19:47 19 Q. And his initial appearance was on or about  
00:19:50 20 December 9 of 2020; is that correct?

00:19:52 21 A. Yes.

00:20:02 22 Q. Did you have the opportunity to review the  
00:20:07 23 evidence in regard to the burial of firearms that the  
00:20:09 24 investigation had revealed?

00:20:10 25 A. Yes.

00:20:11 1 Q. And did you prepare a series of clips from the  
00:20:15 2 various video and video footage that would be of  
00:20:20 3 assistance to the Court in understanding the timeline of  
00:20:22 4 events?

00:20:23 5 A. Yes.

00:20:26 6 Q. All right. First, the plea of guilty and the  
00:20:31 7 debrief that followed was itself following a superseding  
00:20:34 8 indictment which charged Mr. Fedak with obstruction; is  
00:20:38 9 that right?

00:20:38 10 A. Yes.

00:20:39 11 Q. As part of that investigation is it true you  
00:20:41 12 received a tip which included a nine-minute video of Mr.  
00:20:46 13 Fedak talking about having buried the firearms?

00:20:49 14 A. Yes.

00:20:49 15 Q. And in particular, is there a portion of that  
00:20:53 16 video that speaks directly to the timeline as to when  
00:21:00 17 these firearms would have been buried?

00:21:05 18 A. Yes.

00:21:19 19 MS. KOCHER: If I may have just a moment,  
00:21:21 20 Your Honor.

00:21:21 21 MS. BRENNAN: Your Honor, I would object to  
00:21:22 22 this being introduced as evidence based on the marital  
00:21:27 23 privilege.

00:21:28 24 THE COURT: Based on what?

00:21:29 25 MS. BRENNAN: Marital privilege. This is a

00:21:29 1 conversation that occurred between Mr. Fedak and his  
00:21:33 2 wife that she recorded.

00:21:40 3 MS. KOCHER: I believe it came in without  
00:21:42 4 objection. It's already in the Court's record as  
00:21:46 5 Exhibit 4 from the detention hearing, Your Honor.

00:21:48 6 THE COURT: Well, I don't think we're  
00:21:51 7 circumscribed at a detention hearing or at a sentencing  
00:21:56 8 hearing by such a contention. Do you think  
00:22:00 9 differently?

00:22:01 10 MS. BRENNAN: The Rules of Evidence do not  
00:22:03 11 strictly apply. However, I would note that this was at  
00:22:07 12 a marital communication, and I feel like it should be  
00:22:10 13 excluded as such.

00:22:14 14 THE COURT: Well, I'll tell you, I read a  
00:22:16 15 whole lot of marital communications in presentence  
00:22:20 16 reports. I'm going to let this in.

00:22:31 17 BY MS. KOCHER:

00:22:31 18 Q. From that video clip of that nine-minute video,  
00:22:35 19 can you tell the Court what you heard and viewed?

00:22:39 20 A. Yes. Mr. Fedak told the witness that once he  
00:22:45 21 realized the guns were located at the DBJ Corporation,  
00:22:49 22 he moved them specifically so nothing would be at the  
00:22:52 23 DBJ Corporation and tied to her family because her  
00:22:56 24 family had nothing to do with the alleged misconduct.

00:23:03 25 MS. KOCHER: All right. I'd like to play

00:23:07 1 that clip for the Court now.

00:23:20 2 (Whereupon exhibit is attempted to be played  
00:23:28 3 in open court; no audio.)

00:23:48 4 BY MS. KOCHER:

00:23:49 5 Q. So as you described --

00:23:50 6 THE COURT: Are you going to play it?

00:23:52 7 MS. KOCHER: Your Honor --

00:23:56 8 THE COURT: We can get an IT person down.

00:23:59 9 Let's just be at ease while Ryan Willett is  
00:24:05 10 invited to the courtroom by Ms. Castania.

00:24:16 11 MS. KOCHER: Thank you, Your Honor.

00:24:18 12 THE COURT: I would like it louder.

00:24:22 13 MS. KOCHER: My apologies.

00:24:25 14 This is Exhibit 3.

00:24:27 15 (Whereupon exhibit is played in open court.)

00:26:02 16 BY MS. KOCHER:

00:26:02 17 Q. Did you hear, Agent Salomon, any reference to  
00:26:07 18 having buried the guns in December of '20?

00:26:09 19 A. No.

00:26:10 20 Q. Instead, what did you hear?

00:26:11 21 A. I heard that the guns were buried around the time  
00:26:16 22 of that video, within a few months, in order to insure  
00:26:20 23 that -- or within a series of a few days, per what the  
00:26:23 24 investigation showed, to avoid them being at DBJ.

00:26:27 25 Q. What is DBJ?

00:26:28 1 A. DBJ Corporation is the business owned by his  
00:26:34 2 wife's family.

00:26:36 3 Q. All right. Now, in investigating the  
00:26:39 4 obstruction conduct, you, yourself, went to DBJ; is that  
00:26:46 5 correct?

00:26:46 6 A. Yes.

00:26:46 7 Q. And located a number of available video footages  
00:26:52 8 from that company and from its areas and parking lot; is  
00:26:58 9 that correct?

00:26:58 10 A. Yes.

00:26:58 11 Q. As with the previous video, did you put together  
00:27:02 12 particular clips that would be of interest in assistance  
00:27:05 13 to the Court in understanding the timeline of the events  
00:27:08 14 on that day?

00:27:09 15 A. Yes.

00:27:09 16 Q. All right. First I'm going to show you what has  
00:27:14 17 been marked as Exhibit 4.

00:24:28 18 (Whereupon exhibit is played in open court.)

00:27:22 19 THE COURT: So 4 is on that disk? Multiple  
00:27:27 20 clips are on the disk that you handed up?

00:27:31 21 MS. KOCHER: That's correct, Your Honor.

00:27:32 22 BY MS. KOCHER:

00:27:32 23 Q. If you would, Agent Salomon, just describe what  
00:27:35 24 you're seeing here?

00:27:36 25 A. The video depicts Mr. Fedak walking into the DBJ

00:27:40 1 Corporation area where he was working holding both a  
00:27:43 2 pickax and a shovel walking towards the end of the  
00:27:46 3 building to the side door and then exiting the door  
00:27:50 4 towards the front of the business. And the time is  
00:27:54 5 approximately 11:54.

00:27:59 6 Q. Do you know if that's in the morning or the  
00:28:01 7 evening?

00:28:02 8 A. That's in the morning of February 9 of 2022.

00:28:08 9 Q. So it is at about 20 seconds in the clip when you  
00:28:17 10 can see from the rear view of Mr. Fedak the clear view  
00:28:21 11 of both a shovel and a pickax in his left hand?

00:28:24 12 A. Yes.

00:28:24 13 Q. Can you describe for the record the demeanor, if  
00:28:29 14 you would, as he's carrying those items?

00:28:32 15 A. He's holding them both in one hand and walking at  
00:28:36 16 a normal pace out of the building.

00:28:40 17 Q. All right. The next clip you prepared,  
00:28:45 18 Government's Exhibit 5, is outside of a DBJ trailer; is  
00:29:00 19 that correct?

00:24:28 20 (Whereupon exhibit is played in open court.)

00:29:00 21 A. The next video I believe is outside -- yes, this  
00:29:03 22 is outside the trailer. These may have gotten out of  
00:29:08 23 order here.

00:29:09 24 BY MS. KOCHER:

00:29:09 25 Q. They did. Sorry. Let's try this one.

00:29:12 1 Exhibit 5.

00:24:28 2 (Whereupon exhibit is played in open court.)

00:29:13 3 A. Correct. So this is the front camera depicting  
00:29:16 4 the area where when you walk out that door from the  
00:29:18 5 workshop that faces the front of the building, the  
00:29:21 6 Silver Ford truck is his vehicle. He walks over to the  
00:29:26 7 truck and puts both the pickax and the shovel in the bed  
00:29:29 8 of the truck, closes the door.

00:29:31 9 BY MS. KOCHER:

00:29:31 10 Q. And there were several spots in there where both  
00:29:34 11 of those tools could be seen; is that correct?

00:29:36 12 A. Yes.

00:29:38 13 Q. Namely right there at about three seconds in?

00:29:41 14 A. Yes.

00:29:42 15 Q. And then again when he turns at the end of the  
00:29:44 16 truck?

00:29:45 17 A. Yes.

00:29:47 18 Q. You can see the two handles as they go into the  
00:29:50 19 bed of the truck. And that was at about ten seconds in?

00:29:54 20 A. Yes.

00:29:57 21 Q. Moving on to Exhibit 6 then.

00:30:05 22 Hang on.

00:30:08 23 The disk does not have multiple copies, just for  
00:30:13 24 the --

00:30:17 25 Is that the same one?

00:30:20 1 A. Still the same video.

00:30:22 2 Q. My apologies.

00:30:34 3 A. It should be the initial one you had pulled up  
00:30:37 4 out of the trailer.

00:30:38 5 Q. I'm sorry? I can't hear you.

00:30:40 6 A. It should have been the initial video of the --  
00:30:45 7 where the silver truck is parked by the trailer in the  
00:30:48 8 back.

00:30:56 9 Not this one.

00:31:14 10 MS. KOCHER: If I can have just a moment,  
00:31:16 11 Your Honor, I need to clean up the database so I don't  
00:31:19 12 continue to take your time.

00:31:21 13 THE COURT: Take a moment.

00:32:19 14 BY MS. KOCHER:

00:32:20 15 Q. All right. Let's see if I'm back on track now.  
00:32:43 16 What does this video show?

00:24:28 17 (Whereupon exhibit is played in open court.)

00:32:49 18 A. Still the --

00:32:51 19 BY MS. KOCHER:

00:32:51 20 Q. Still the wrong video?

00:32:58 21 A. It should be, I believe, the one that's marked  
00:33:01 22 Exhibit 4 in what you had just pulled up. It may have  
00:33:05 23 been mislabeled. Either 4 or 7. I believe it's the  
00:33:11 24 one marked 4.

00:33:13 25 MS. KOCHER: Your Honor, may I retrieve the



00:33:17 1 disk from the Court and just play from the disk? I  
00:33:23 2 apologize.

00:34:08 3 BY MS. KOCHER:

00:34:09 4 Q. All right. This is Government's Exhibit 6.

00:24:28 5 (Whereupon exhibit is played in open court.)

00:24:28 6 BY MS. KOCHER:

00:34:10 7 Q. What is happening here?

00:34:12 8 A. This is the time Mr. Fedak returns in the silver  
00:34:19 9 truck; he is seen taking the pickax out of the bed and  
00:34:21 10 placing it into the second trailer, which is the same  
00:34:24 11 location where NCIS located a pickax when we went to DBJ  
00:34:28 12 Corporation.

00:34:29 13 Q. Now, in compiling these videos, did you look at  
00:34:36 14 all the video footage?

00:34:38 15 A. Yes.

00:34:38 16 Q. And following his placement of this pickax in the  
00:34:41 17 trailer, did you ever see the pickax again?

00:34:43 18 A. I did not see the pickax again.

00:34:46 19 Q. Did you come to see the pickax again some other  
00:34:49 20 time?

00:34:49 21 A. Yes, I saw it again when we went to DBJ, and it  
00:34:53 22 was in that same location where it was placed in this  
00:34:55 23 video.

00:34:56 24 Q. Right inside the door?

00:34:57 25 A. Yes.

00:35:02 1 Q. And Government's Exhibit 7 is a clip that  
00:35:05 2 demonstrates what?

00:24:28 3 (Whereupon exhibit is played in open court.)

00:35:06 4 A. So there is Mr. Fedak walking out of that  
00:35:09 5 furthestmost trailer carrying unknown objects and placing  
00:35:13 6 them in the bed of the silver truck.

00:35:16 7 BY MS. KOCHER:

00:35:16 8 Q. Now, Agent Salomon, to your viewing, what is his  
00:35:22 9 posture and attitude toward this object he's carrying  
00:35:27 10 compared to that when he was carrying the shovel and  
00:35:30 11 pickax in his left hand earlier?

00:35:32 12 A. He appears to be handling the unknown object  
00:35:35 13 carefully, kind of slanted to the side, before he places  
00:35:39 14 the unknown object into the bed of the truck.

00:35:44 15 Q. All right. Now, I note this does not appear to  
00:35:46 16 be the same speed with which some of the other video  
00:35:49 17 ran. Can you explain that?

00:35:50 18 A. Correct. Some of the videos I utilized the  
00:35:55 19 Microsoft or the Windows feature to be able to slow down  
00:35:57 20 videos so that things were easier to see for the Court,  
00:36:01 21 not in real speed.

00:36:02 22 Q. Having reviewed the original video, did that  
00:36:05 23 alter the video in any way other than just slowing it  
00:36:08 24 down?

00:36:09 25 A. No.

00:36:11 1 Q. I'm now playing what's marked as Government's  
00:36:14 2 Exhibit 8.

00:24:28 3 (Whereupon exhibit is played in open court.)

00:24:28 4 BY MS. KOCHER:

00:36:14 5 Q. What are we seeing?

00:36:15 6 A. So the silver truck is moved back to the front.  
00:36:18 7 The DBJ vehicle is now pulled around to the back of the  
00:36:21 8 silver truck. Mr. Fedak is reaching into the silver  
00:36:25 9 truck and pulls unknown objects out of that truck and  
00:36:27 10 places them into the front passenger's seat of the DBJ  
00:36:32 11 vehicle.

00:36:47 12 Q. What will we see him doing here momentarily?

00:36:51 13 A. Taking some type of bag or trash bag or sack and  
00:36:56 14 appears to place it for a number of seconds over  
00:36:58 15 whatever was placed in the front seat.

00:37:09 16 Q. Were you able to identify specifically the object  
00:37:11 17 he is moving from the bed of that truck to the cab of  
00:37:14 18 the DBJ truck?

00:37:16 19 A. Not specifically.

00:37:20 20 Q. Where in the timeline does this video fall?  
00:37:22 21 Where is the pickax at this moment?

00:37:24 22 A. The pickax in this moment, we had just watched it  
00:37:27 23 placed in that second trailer. And this is shortly  
00:37:30 24 after that.

00:37:32 25 Q. And where is the shovel, if you know?

00:37:34 1 A. The shovel is still in the bed of the truck,  
00:37:36 2 which he removes in the next video and places in the bed  
00:37:40 3 of the DBJ truck.

00:37:43 4 Q. Let's go on to Exhibit 9.

00:24:28 5 (Whereupon exhibit is played in open court.)

00:24:28 6 BY MS. KOCHER:

00:38:02 7 Q. DBJ had a GPS on this truck; is that right?

00:38:05 8 A. Yes.

00:38:05 9 Q. Following that particular video, did you utilize  
00:38:08 10 that GPS information to learn where the truck was driven  
00:38:12 11 by Mr. Fedak?

00:38:13 12 A. Yes.

00:38:13 13 Q. Where did it go?

00:38:14 14 A. Ultimately it drove to what we believe is the job  
00:38:18 15 site, and then drove to the location off Vandalia Road  
00:38:23 16 where the buried weapons were recovered.

00:38:25 17 Q. You prepared one final clip that's reflecting Mr.  
00:38:29 18 Fedak's return to DBJ; is that correct?

00:38:31 19 A. Yes.

00:24:28 20 (Whereupon exhibit is played in open court.)

00:38:36 21 A. In this video he pulls the shovel and some type  
00:38:40 22 of bag out of the back of the truck bed. And there was  
00:38:46 23 no pickax seen in this video.

00:38:51 24 MS. KOCHER: All right. Thank you, Agent  
00:38:53 25 Salomon.

00:39:02 1 THE COURT: Are you finished with him, Ms.  
00:39:03 2 Kocher?

00:39:04 3 MS. KOCHER: No.

00:39:07 4 THE COURT: Okay.

00:39:09 5 BY MS. KOCHER:

00:39:10 6 Q. Can you tell the Court the condition of the guns  
00:39:11 7 that were recovered following the burial?

00:39:14 8 A. Yes. They had some slight rust on them but not  
00:39:19 9 in horrible condition.

00:39:22 10 Q. And do you have just personal experience with  
00:39:26 11 your own weapons?

00:39:27 12 A. Yes.

00:39:28 13 Q. What have you experienced in regard to the  
00:39:33 14 development of rust on guns?

00:39:35 15 A. So it can happen just from -- if I carry my Sig,  
00:39:39 16 which is a metal-based gun, inside the waistband against  
00:39:43 17 my skin, the salt and stuff can cause a little bit of  
00:39:47 18 rust on the external of that, which is why I regularly  
00:39:51 19 clean that weapon to keep it from having any rust spots.

00:39:54 20 Q. What would you have expected the condition of the  
00:39:56 21 guns to be if they had been in the ground for four days,  
00:39:59 22 say?

00:40:01 23 A. Not overly rusted and still having a descent  
00:40:04 24 amount -- maybe a little bit of rust here and there.  
00:40:07 25 But if they were in there for a long time, they probably

00:40:09 1 would have had a large amount of rust.

00:40:14 2 Q. So if Mr. Fedak buried the guns off of Vandalia  
00:40:21 3 Road, as he said, in or around December of 2020, that  
00:40:24 4 would have put them in the ground for more than a year;  
00:40:27 5 is that right?

00:40:27 6 A. Yes.

00:40:28 7 Q. And you would have an expectation then that rust  
00:40:31 8 would have developed?

00:40:32 9 MS. BRENNAN: Objection, Your Honor.  
00:40:34 10 Again, he's not an expert on rust development or  
00:40:37 11 scientific analysis of how metals deteriorate over time.  
00:40:41 12 He's really going beyond his scope.

00:40:44 13 THE COURT: Okay.

00:40:46 14 MS. BRENNAN: He's a fact witness, Your  
00:40:47 15 Honor, not an expert.

00:40:49 16 THE COURT: Sustained.

00:40:52 17 BY MS. KOCHER:

00:40:52 18 Q. Was there any rust on the guns when you saw them?

00:40:54 19 A. A very little amount.

00:41:06 20 Q. In the debrief, Agent Salomon, did Mr. Fedak make  
00:41:10 21 any statements in regard to activities in the year 2019?

00:41:17 22 A. Yes.

00:41:18 23 Q. And were any of those statements relevant to the  
00:41:21 24 final disposition of the weapons?

00:41:24 25 A. Yes.

00:41:26 1 Q. And what did he say?

00:41:27 2 A. So he provided that initially when he learned  
00:41:32 3 about the investigation that he called another  
00:41:34 4 individual, Sergeant Major Lucas McKinney, and asked for  
00:41:40 5 weapons back from the North Carolina list, and that  
00:41:43 6 Sergeant Major McKinney told him that that wasn't  
00:41:46 7 possible. And ultimately those weapons were not  
00:41:51 8 recovered.

00:41:52 9 Q. And if I can turn your attention back to Exhibit  
00:41:55 10 1, when did the investigation begin?

00:41:58 11 A. The investigation began in December of 2019. We  
00:42:02 12 received the notice of representation 16 December of  
00:42:05 13 2019.

00:42:07 14 Q. And Mr. Fedak told you that it was in 2019 that  
00:42:10 15 he called Sergeant Major McKinney to request those guns  
00:42:15 16 back?

00:42:15 17 A. Yes.

00:42:18 18 Q. If I can ask you now to look at Government's  
00:42:20 19 Exhibit 11. To assist in your testimony today, did you  
00:42:26 20 prepare a chart detailing each of the 66 requisitioned  
00:42:32 21 firearms, whether or not they were recovered, and other  
00:42:36 22 pertinent details?

00:42:37 23 A. Yes.

00:42:38 24 Q. Is Exhibit 11 that chart?

00:42:40 25 A. Yes.

00:42:40 1 Q. Is it true that it will, in fact, help you recall  
00:42:44 2 the details between the guns and the various things that  
00:42:47 3 you've learned about each of those guns?

00:42:49 4 A. Yes.

00:42:50 5 Q. First, if you would, taking a look at column B in  
00:42:56 6 particular, it appears that the entries in the rows  
00:43:02 7 below, some have spaces between them, and some do not.  
00:43:07 8 Can you explain that to the Court?

00:43:09 9 A. Yes. The spaces involve different transactions.  
00:43:12 10 So the transfer orders themselves are tied to --  
00:43:17 11 sometimes there were multiple transfer orders pertaining  
00:43:20 12 to a transaction with multiple serial numbers. So all  
00:43:23 13 of those are grouped together.

00:43:25 14 Q. I see. So each segment under column B is a  
00:43:28 15 particular transfer order?

00:43:30 16 A. Yes.

00:43:30 17 Q. Do you have any information as to whether those  
00:43:32 18 transfer orders resulted in a single shipment, or is it  
00:43:36 19 a shipment per transfer order?

00:43:38 20 A. So some of them are broken up into multiple  
00:43:41 21 shipments per transfer order. But for the most part  
00:43:44 22 it's one shipment per transfer order.

00:43:48 23 Q. How did you come to know that?

00:43:49 24 A. We came to that conclusion through researching  
00:43:52 25 and speaking with agencies themselves and obtaining



00:43:54 1 shipping records, emails, voice mails, and things of  
00:43:57 2 that nature.

00:43:58 3 Q. You were able to talk with a number of agents who  
00:44:01 4 were providing the items actually that had been  
00:44:04 5 requisitioned?

00:44:05 6 A. Yes.

00:44:06 7 Q. I note column A is the state. And it appears  
00:44:10 8 California takes up most of the first page of  
00:44:13 9 Government's Exhibit 11, and North Carolina a good  
00:44:17 10 portion of page 2; is that correct?

00:44:19 11 A. Yes.

00:44:19 12 Q. All right. Let's just go through the chart very  
00:44:23 13 quickly at this point. What, if anything, do the  
00:44:27 14 shaded lines mean in the chart?

00:44:30 15 A. The shaded lines are weapons that we recovered  
00:44:34 16 during the course of this investigation.

00:44:36 17 Q. All right. Of the 66, do you know off the top  
00:44:40 18 of your head how many were recovered?

00:44:42 19 A. I believe it was 22, approximately.

00:44:46 20 Q. And that's recovered by any means, whether they  
00:44:49 21 were unburied or given to you some other way?

00:44:52 22 A. Yes.

00:44:54 23 Q. I see the transfer dates are here. If I can  
00:44:58 24 turn you to page 2, column M reflects statements that  
00:45:09 25 Fedak made in regard to specific weapons; is that

00:45:12 1 correct?

00:45:12 2 A. Yes.

00:45:13 3 Q. What did Mr. Fedak say about the disposition of  
00:45:16 4 most of the weapons found on page 2?

00:45:19 5 A. Most of the weapons he said were -- he  
00:45:22 6 transferred to Sergeant Major Lucas McKinney at Lucas  
00:45:26 7 McKinney's request to order them.

00:45:28 8 Q. And what date were those transfers made to Mr.  
00:45:32 9 Fedak?

00:45:34 10 A. On here, 11/13/2019, and then 11/19/2019, and  
00:45:44 11 11/25/2019.

00:45:48 12 Q. And we just previously discussed his statement  
00:45:52 13 that he attempted to call Mr. McKinney when he learned  
00:45:54 14 of the investigation; is that right?

00:45:55 15 A. Yes.

00:45:56 16 Q. And that would have been within 30 days of Mr.  
00:46:09 17 Fedak himself receiving those very weapons; is that  
00:46:12 18 right?

00:46:12 19 A. Yes.

00:46:13 20 I missed in here the November 6, 2019 weapons as  
00:46:17 21 well.

00:46:17 22 Q. All right. Just moving across then the column  
00:46:23 23 names, column J says "Listed in CLEOC." What is that?

00:46:31 24 A. So CLEOC is NCIS's law enforcement operations  
00:46:35 25 system. It ties to military bases run by PMO, the

00:46:41 1 Provost Marshal Office, then Marine Corps CID has  
00:46:45 2 access, and different parties have access based on their  
00:46:48 3 role.

00:46:50 4 And the weapons listed in that column were  
00:46:52 5 weapons that Mr. Fedak had listed as having registered  
00:46:56 6 them on base as personally owned weapons.

00:46:59 7 Q. All right. I notice that at least it looks like  
00:47:05 8 four of those have both a "Y" in that column that they  
00:47:09 9 had been listed as a personal weapon of his, but then  
00:47:13 10 also a "Y" under the column that says "buried;" is that  
00:47:17 11 right?

00:47:17 12 A. Yes.

00:47:17 13 Q. Did he make any statements to you about which  
00:47:20 14 guns he chose to bury?

00:47:21 15 A. He stated that he buried the illegal weapons.

00:47:30 16 Q. Turning to column L, it says "Transferred at  
00:47:33 17 Gunther Guns." What is that?

00:47:35 18 A. So during the investigation I searched ATF  
00:47:38 19 records, which resulted in identifying transactions made  
00:47:43 20 by Mr. Fedak through a licensed FFL dealer in California  
00:47:50 21 which was Gunther Guns. And the serial numbers for  
00:47:54 22 those weapons transferred were from the list of stolen  
00:47:58 23 weapons.

00:48:00 24 Q. And did you ask Mr. Fedak about that particular  
00:48:03 25 series of transfers?

00:48:04 1 A. Yes.

00:48:04 2 Q. What did he say?

00:48:05 3 A. He provided that he was asked by Michael Cornett  
00:48:11 4 to act as the transferrer on behalf of Cornett's father  
00:48:17 5 so that Cornett would be able to legally own them in  
00:48:22 6 California and that he was not aware of where the  
00:48:26 7 weapons were from, that they were from GSAXcess.

00:48:30 8 Q. So Mr. Fedak told you that Michael Cornett -- and  
00:48:38 9 Cornett had a role in the acquisition of these  
00:48:40 10 particular weapons; is that right?

00:48:42 11 A. Yes, in the weapons Michael Cornett from  
00:48:45 12 California is listed as the requester, and Fedak is  
00:48:48 13 listed as the approver.

00:48:50 14 Q. Approver. Okay.

00:48:52 15 So that Cornett came to Mr. Fedak, asked him to  
00:48:56 16 pretend to be the owner of these guns, which Fedak did  
00:48:59 17 not know were obtained from GSA?

00:49:02 18 A. Yes.

00:49:03 19 Q. And Mr. Fedak did go into Gunther Guns and  
00:49:06 20 assisted Cornett with that transfer?

00:49:09 21 A. Yes.

00:49:09 22 Q. Now, would that have required the ATF Forms 4473  
00:49:13 23 and all of that to be filled out as to each weapon?

00:49:16 24 A. Yes.

00:49:16 25 Q. And those are signed too under penalty of

00:49:20 1 perjury?

00:49:20 2 A. Yes.

00:49:27 3 Q. Did Mr. Fedak say whether or not Cornett gave him  
00:49:29 4 anything as a result of this service he provided?

00:49:31 5 A. Yes. He provided he was given two guns as a  
00:49:38 6 result.

00:49:38 7 Q. Are those two guns on this chart?

00:49:39 8 A. Yes.

00:49:40 9 Q. Which two are they?

00:49:41 10 A. They are the DST8544, the pistol.

00:49:56 11 Q. Line 8?

00:49:56 12 A. Correct.

00:49:58 13 Then the other one was the NGH206.

00:50:04 14 Q. Line 35, that is?

00:50:06 15 A. Yes.

00:50:07 16 Q. And were those weapons that had been given by  
00:50:11 17 Cornett to Mr. Fedak buried as well?

00:50:14 18 A. Yes.

00:50:24 19 Q. Overall did Mr. Fedak believe that he bore  
00:50:29 20 responsibility for a number of these weapons from  
00:50:32 21 California?

00:50:34 22 A. No, he provided he did not know any other  
00:50:38 23 information about the additional California weapons  
00:50:42 24 because he was not involved in their procurement.

00:50:44 25 Q. I'm sorry?

00:50:45 1 A. He was not involved in their procurement.

00:50:47 2 Q. All right. Let me turn you to the lines  
00:50:50 3 beginning at 37 at the bottom of the first page. I see  
00:50:54 4 in column N it reflects that "Fedak left voice mail."  
00:50:58 5 Can you tell us about that?

00:50:59 6 A. Yes. So the weapons tied to the Gunther Guns  
00:51:06 7 transaction were acquired from a Department of Treasury  
00:51:09 8 Division known as SIGTARP having to do with asset relief  
00:51:14 9 programs through the Treasury. There's emails and  
00:51:19 10 voice mails that we obtained from SIGTARP of Mr. Fedak  
00:51:23 11 being in contact with SIGTARP coordinating the  
00:51:27 12 acquisition, I believe, of 12 different weapon, some of  
00:51:30 13 which were the ones that we recovered buried, and also  
00:51:34 14 seized from Mr. Cornett.

00:51:44 15 Q. Finally I note in column M at lines 15, 16, and  
00:51:49 16 42 there are comments in that column M. What is that?

00:52:00 17 A. Column M. There was a Smith & Wesson Model 1006  
00:52:05 18 handgun that was anonymously turned in initially in  
00:52:11 19 California. And Mr. Fedak made a statement during the  
00:52:15 20 interview that he did not give a Smith & Wesson 1006 to  
00:52:19 21 anyone other than what had been recovered, and he didn't  
00:52:22 22 have any other information on it because he was not  
00:52:25 23 involved in the procurement.

00:52:27 24 And after that interview I was able to track down  
00:52:30 25 who had that weapon, interviewed Mr. Daniel Navarro, who

00:52:38 1 provided that he received that weapon from Mr. Fedak,  
00:52:42 2 and also provided he had another weapon in his  
00:52:44 3 possession from Mr. Fedak that we seized, the serial  
00:52:47 4 number of which matched the -- another one of these  
00:52:51 5 weapons from this list.

00:52:54 6 Now going down to 16 and 42, these were weapons  
00:53:02 7 that we recovered, and he had provided initially that he  
00:53:05 8 had taken the weapons to his in-laws' house and hid them  
00:53:10 9 in a crawl space before he ultimately reburied them.

00:53:14 10 Q. All right. And those statements about the crawl  
00:53:16 11 space, that occurred at the debrief?

00:53:18 12 A. Can you repeat that?

00:53:19 13 Q. The statements in regard to his mother-in-law's  
00:53:22 14 crawl space was at the debrief? He told you that in the  
00:53:25 15 debrief?

00:53:25 16 A. Yes.

00:53:26 17 Q. And that's contrary to his statements that he was  
00:53:29 18 removing them from DBJ; is that correct?

00:53:32 19 A. Yes.

00:53:34 20 Q. Agent Salomon, the Notice of Representation at  
00:53:40 21 Government's Exhibit 1 was dated December 16, 2019; is  
00:53:45 22 that correct?

00:53:46 23 A. Yes.

00:53:48 24 Q. Sir, what was the date the notary signed Mr.  
00:53:52 25 Fedak's signature on Government's Exhibit 2 at page --

00:53:58 1 A. March 10, 2020.

00:54:00 2 Q. I'm sorry?

00:54:01 3 A. March 10, 2020, I believe.

00:54:03 4 Q. March 10 of 2020?

00:54:05 5 A. Yes.

00:54:07 6 MS. KOCHER: No further questions, Your  
00:54:10 7 Honor.

00:54:10 8 THE COURT: Okay.

00:54:11 9 MS. BRENNAN: May I have a few moments to  
00:54:13 10 consult? Thank you.

00:54:16 11 (Discussion had off the record between the  
00:55:32 12 Defendant and defense counsel.)

00:55:32 13 THE COURT: If you want, we can take an  
00:55:35 14 early lunch break and come back at 12:45 for your cross.  
00:55:42 15 I'll just throw that out.

00:55:49 16 MS. BRENNAN: Your Honor, I'll defer to the  
00:55:53 17 Court, but I think we can --

00:55:55 18 THE COURT: You can keep on going?

00:55:56 19 MS. BRENNAN: I believe so, Your Honor.

00:55:57 20 THE COURT: Okay.

00:56:22 21 - - -

00:56:22 22 PETER SALOMON, CROSS-EXAMINATION

00:56:23 23 BY MS. BRENNAN:

00:56:23 24 Q. Good morning, Agent.

00:56:28 25 A. Good morning.



00:56:34 1 Q. I may jump around a little bit here, but I'm  
00:56:37 2 going to try to walk through some of the things I have  
00:56:39 3 questions about from your testimony, okay?

00:56:41 4 A. Okay.

00:56:50 5 Q. Let's start sort of from the end with the  
00:56:54 6 firearms and the debrief from June of '22. When you  
00:56:59 7 were questioning him in this debrief, did you record the  
00:57:02 8 debrief with anything other than note taking?

00:57:06 9 A. No, it was not recorded.

00:57:09 10 Q. So the testimony is from the best of your  
00:57:11 11 recollection based off of notes that you took? It's not  
00:57:14 12 a verbatim transcript, correct?

00:57:16 13 A. Both notes and another special agent who was  
00:57:18 14 present, yes.

00:57:19 15 Q. From notes, not from any type of recording  
00:57:22 16 device, correct?

00:57:23 17 A. Yes.

00:57:24 18 Q. And when you asked him about the weapons in  
00:57:27 19 California, the ones that were acquired while he was  
00:57:30 20 stationed in California, your questions specifically  
00:57:33 21 were in regards to where those weapons were located now  
00:57:36 22 and if he had access or could tell you where any of the  
00:57:40 23 weapons might be located, correct?

00:57:42 24 A. Yes, there were questions about that.

00:57:45 25 Q. And his response was that he wasn't sure where

00:57:50 1 any of the weapons were now, correct?

00:57:53 2 A. He stated he did not know.

00:57:54 3 Q. Correct. And the weapons acquired in  
00:57:59 4 California, according to the transfer dates, were  
00:58:02 5 transferred in 2017, correct?

00:58:05 6 A. I believe some were also 2018.

00:58:07 7 Q. 2017 to 2018?

00:58:09 8 A. Yes.

00:58:10 9 Q. So roughly five to six years ago?

00:58:12 10 A. Yes.

00:58:13 11 Q. And he has been stationed -- he was moved to  
00:58:18 12 Marines Corps Air Station Cherry Point in roughly 2018;  
00:58:23 13 is that correct?

00:58:23 14 A. I believe so.

00:58:24 15 Q. Excuse me, Quantico, then Cherry Point, correct?

00:58:26 16 A. Yes.

00:58:27 17 Q. And has not been -- was not restationed in  
00:58:30 18 California after that, right?

00:58:31 19 A. Correct.

00:58:32 20 Q. And the weapons were, in fact, requested by  
00:58:37 21 Cornett and only approved by Mr. Fedak; is that correct?

00:58:41 22 A. Yes.

00:58:42 23 Q. And so his statement that he wasn't sure where  
00:58:49 24 those weapons were located now, you don't have any  
00:58:52 25 evidence to the contrary that he actually knew where the

00:58:55 1 weapons are presently, correct?

00:58:57 2 A. He -- I'm a little confused by the wording. Can  
00:59:01 3 you rephrase that?

00:59:02 4 Q. You don't have any evidence that he, in fact,  
00:59:05 5 knew where the location of those weapons were in June of  
00:59:08 6 '22, correct?

00:59:09 7 A. He stated that he did not have any knowledge of  
00:59:14 8 them because he had not been involved in their  
00:59:16 9 acquisition, which was proven not to be factual.

00:59:21 10 Q. He did not say that he had no involvement in  
00:59:25 11 their acquisition, did he?

00:59:27 12 A. He stated he had not received any of the weapons  
00:59:30 13 or participated in the additional weapons procurement  
00:59:33 14 other than what had been seized.

00:59:40 15 Q. His statement was that he did not know where the  
00:59:42 16 weapons were presently. He did not state that he had  
00:59:46 17 no involvement in the acquisition of any of the weapons  
00:59:50 18 in California, did he?

00:59:51 19 A. He provided at the start of the interview that  
00:59:54 20 the list of weapons from California was incorrect per  
00:59:58 21 the GSA records. He stated that was not an accurate  
01:00:01 22 representation of the weapons acquired in California.

01:00:03 23 Q. But he never made a statement that he had no  
01:00:06 24 involvement in the acquisition of those weapons,  
01:00:08 25 correct?

01:00:09 1 A. Not pertaining to the acquisition, but pertaining  
01:00:11 2 to their transfer or knowledge of where they are or  
01:00:15 3 where they went.

01:00:17 4 Q. That's -- now, that is accurate. He made a  
01:00:20 5 statement that he had no knowledge of where they  
01:00:22 6 presently were, correct?

01:00:24 7 A. Yes.

01:00:25 8 Q. And he -- but he did not deny that he had played  
01:00:29 9 a role in the acquisition of those weapons, correct?

01:00:32 10 A. Correct, except for the weapons that he said were  
01:00:36 11 incorrect from the list from California at the start.  
01:00:41 12 That's how he opened the interview, by telling us that.

01:01:02 13 Q. This document, Government's Exhibit 11, that was  
01:01:04 14 provided today, correct?

01:01:06 15 A. Yes.

01:01:20 16 Q. Let's talk a little bit about some of the -- some  
01:01:27 17 of what you discussed in relation to the trailer or the  
01:01:30 18 guns that were found behind the church on Vandalia Road.  
01:01:40 19 I'm going to try to get the exhibits right.

01:01:43 20 You went through multiple videos, correct?

01:01:50 21 A. I went through multiple hours of surveillance  
01:01:54 22 footage from videos.

01:01:55 23 Q. But they were all taken from different cameras,  
01:01:58 24 right?

01:01:58 25 A. Yes. Some of the videos were from the same

01:02:01 1 camera.

01:02:01 2 Q. But whenever we saw a different angle, it was  
01:02:04 3 from -- or a different location was from a different  
01:02:04 4 camera, correct?

01:02:05 5 A. Yes.

01:02:05 6 Q. Out of those videos that you watched, only one of  
01:02:08 7 those had a time stamp, correct?

01:02:09 8 A. No, they all had time stamps, but in this  
01:02:13 9 presentation they didn't have time stamps because they  
01:02:15 10 were cut from the original.

01:02:17 11 Q. So the videos were altered in such a way that we  
01:02:20 12 couldn't view the time stamps?

01:02:21 13 A. Well, for some of the parts of the video, they  
01:02:26 14 were zoomed in on for the purpose of the Court  
01:02:28 15 presentation. But the full video to include those  
01:02:31 16 parts was part of discovery.

01:02:33 17 Q. So the videos that I saw that are made exhibits  
01:02:38 18 in this courtroom, there was only one that had a time  
01:02:40 19 stamp, and that was the very first one that was  
01:02:43 20 presented, correct?

01:02:44 21 A. Correct.

01:02:46 22 Q. Everything else would have been cut off? The  
01:02:49 23 time stamps were cut off from the exhibits that were  
01:02:51 24 presented, correct?

01:02:52 25 A. Yes, due to zooming.

01:02:54 1 Q. There's no -- on the exhibits that were here,  
01:02:57 2 there is no time stamp on those videos, correct?

01:03:00 3 A. Yes.

01:03:01 4 Q. And I believe you testified as to Exhibit 8 that  
01:03:09 5 you could not identify what objects were being moved  
01:03:12 6 from, I guess, Mr. Fedak's personal vehicle to the DBJ  
01:03:20 7 truck, correct?

01:03:20 8 A. Correct.

01:03:20 9 Q. So you have no idea what those objects are?

01:03:23 10 A. Correct.

01:03:23 11 Q. They could be pipes, correct?

01:03:27 12 A. We have an idea based on his statement. He told  
01:03:30 13 us initially that it was a pickax.

01:03:33 14 Q. Do you have any idea, based on your viewing of  
01:03:36 15 the video, what those objects are?

01:03:39 16 A. I have an inclination, but I do not have  
01:03:42 17 definitive evidence.

01:03:43 18 Q. You watched the video. Do you have any idea  
01:03:45 19 what those objects are? Yes or no?

01:03:47 20 A. I have an idea, but I'm not definitive on that  
01:03:50 21 idea.

01:03:50 22 Q. Can you tell from watching the video exactly what  
01:03:53 23 that is?

01:03:53 24 A. No.

01:04:00 25 THE COURT: Well, he answered your question

01:04:02 1 "Do you have an idea?" in the affirmative. Do you want  
01:04:05 2 to hear what his idea is?

01:04:08 3 MS. BRENNAN: Your Honor, I believe I know  
01:04:09 4 what his -- I know what his idea is. My question was  
01:04:14 5 more directed: Can he see clearly from the video what  
01:04:16 6 the objects are? That's probably a better way to phrase  
01:04:20 7 it.

01:04:21 8 A. No.

01:04:22 9 THE COURT: Okay.

01:04:23 10 BY MS. BRENNAN:

01:04:24 11 Q. And you also analyzed the GPS data?

01:04:28 12 A. Yes.

01:04:28 13 Q. So from your analysis of the GPS data, he left  
01:04:32 14 DBJ and went to a job site?

01:04:35 15 A. I believe that's correct.

01:04:36 16 Q. And then went to the location where the firearms  
01:04:39 17 were recovered?

01:04:40 18 A. Yes.

01:04:45 19 Q. Do you know what he was doing at the job site?

01:04:47 20 A. I do not.

01:04:48 21 Q. And you don't know if the objects transferred  
01:04:50 22 from his truck to the DBJ truck have anything to do with  
01:04:53 23 the job site, correct?

01:04:55 24 A. I don't.

01:05:18 25 Q. And the video in question regarding the pickax,

01:05:23 1 when that subject came up in the debrief, I believe that  
01:05:26 2 was in reference to the items that he was putting in the  
01:05:29 3 back of his own personal vehicle, correct?

01:05:32 4 A. It was the items that he was taking out of his  
01:05:34 5 personal vehicle and placing in the DBJ truck, because I  
01:05:37 6 showed him the video on my phone during that interview  
01:05:40 7 multiple times.

01:05:41 8 Q. I do recall watching the video, and I believe the  
01:05:44 9 video that we saw was the video of him placing items in  
01:05:47 10 the back of his truck.

01:05:48 11 A. That is incorrect.

01:06:18 12 Q. Backing up further into the original testimony,  
01:06:23 13 you showed a video that was a film by his wife, correct?

01:06:29 14 A. Correct, that she had turned over to us.

01:06:31 15 Q. In their home, correct?

01:06:33 16 A. In their in-laws' house.

01:06:36 17 Q. Where they were living at the time?

01:06:39 18 A. Correct.

01:06:39 19 Q. And it was filmed without his knowledge?

01:06:43 20 A. I believe so.

01:06:44 21 Q. And it was filmed from her cell phone?

01:06:46 22 A. Yes.

01:06:51 23 Q. And do you know anything about the state of their  
01:06:54 24 marriage at the time?

01:06:55 25 A. I knew they were having some type of marital



01:06:58 1 difficulties because she called NCIS to say that she  
01:07:01 2 wanted to report information about her husband.

01:07:05 3 Q. And so you don't know the substance of the  
01:07:08 4 conversation that occurred prior to what you see on the  
01:07:11 5 video, correct?

01:07:12 6 A. No.

01:07:13 7 Q. And you don't know the substance of the  
01:07:14 8 conversation that occurred after -- it was a roughly  
01:07:18 9 eight- to nine-minute full-length video, correct?

01:07:20 10 A. Correct.

01:07:22 11 Q. And to my knowledge there was no date that was  
01:07:27 12 referenced on the video, that clip that we received,  
01:07:31 13 even within the full eight- to nine-minute video,  
01:07:34 14 correct?

01:07:35 15 A. Correct. There was no specific date.

01:07:37 16 Q. So while you assume that he's referring to  
01:07:40 17 burying the guns recent in time, you don't have any  
01:07:44 18 actual knowledge that that is when he was referring to  
01:07:47 19 burying the guns, correct?

01:07:48 20 A. Not specifically from that video.

01:08:00 21 Q. In regards to the vehicle that was transferred by  
01:08:06 22 Mr. Fedak out of GSAXcess into his possession, there are  
01:08:13 23 multiple signatures on those documents, correct?

01:08:16 24 A. Correct.

01:08:17 25 Q. And they were all documents that were filed with

01:08:19 1 the California Department of Motor Vehicles, correct?

01:08:22 2 A. Yes.

01:08:22 3 Q. And Mr. Fedak admitted to signing those  
01:08:27 4 documents, correct?

01:08:28 5 A. Yes.

01:08:30 6 Q. He did not admit to signing the documents on  
01:08:33 7 behalf of Mr. Gonzalez, correct?

01:08:36 8 A. Correct.

01:08:36 9 Q. And you don't have any evidence that is, in fact,  
01:08:40 10 his signature -- you don't have any evidence that he  
01:08:42 11 signed those documents for Mr. Gonzalez, correct?

01:08:46 12 A. Yeah, nothing specific.

01:08:48 13 Q. You have no idea who signed those on Mr.  
01:08:51 14 Gonzalez's behalf, correct?

01:08:53 15 A. Once again, I believe I have an idea, but I have  
01:08:56 16 no affirmative evidence pertaining to that.

01:08:58 17 Q. And you have no affirmative evidence whether that  
01:09:00 18 signature was placed there before or after he submitted  
01:09:04 19 those documents to the DMV, correct?

01:09:07 20 A. Correct.

01:09:18 21 Q. Were you present at his -- at Mr. Fedak's initial  
01:09:21 22 appearance?

01:09:25 23 A. For the obstruction or for the --

01:09:27 24 Q. I apologize, for the original charge, for the  
01:09:31 25 theft of government property -- the original charge back

01:09:34 1 in December of 2020.

01:09:38 2 A. I believe I was.

01:09:40 3 Q. And Mr. Fedak did, in fact, request appointed  
01:09:43 4 counsel at that hearing, correct?

01:09:45 5 A. Yes.

01:09:46 6 Q. And Mr. Fedak was denied appointed counsel at  
01:09:49 7 that hearing, correct?

01:09:51 8 A. I believe so, yes.

01:09:52 9 Q. It was found he didn't qualify, right?

01:09:54 10 A. I believe so.

01:09:55 11 Q. He had no attorney representing him beyond the  
01:09:58 12 temporary appointment for that day, correct?

01:10:04 13 A. Yes.

01:10:08 14 MS. BRENNAN: May I have one moment, Your  
01:10:11 15 Honor?

01:10:11 16 (Discussion had off the record between the  
01:10:54 17 Defendant and defense counsel.)

01:10:54 18 MS. BRENNAN: One more question, Your Honor.

01:10:57 19 BY MS. BRENNAN:

01:10:58 20 Q. You have transfer numbers for all of these  
01:11:01 21 weapons. Do you have any confirmation that each and  
01:11:05 22 every one of these weapons, the transfer was actually  
01:11:08 23 completed?

01:11:10 24 A. Not for every single item on here, but for a  
01:11:14 25 majority.

01:11:15 1 Q. But not for every weapon? So there very well  
01:11:18 2 could be some weapons on here that while they were  
01:11:20 3 requested and assigned a transfer number, that transfer,  
01:11:24 4 in fact, never occurred, correct?

01:11:25 5 A. It is possible, I believe, for at least one  
01:11:28 6 weapon there.

01:11:31 7 Q. So for the other 65 you have confirmation they  
01:11:37 8 were actually transferred?

01:11:38 9 A. I'm not positive on the specifics of every  
01:11:40 10 shipping label and every email that we have.

01:11:45 11 Q. Because there were a number of items in this  
01:11:47 12 case, in the grand scheme of the case, not just the  
01:11:51 13 weapons but all of the items that were requested during  
01:11:54 14 Mr. Fedak's tenure in the military, numerous ones of  
01:11:57 15 those he requested and they were never received: small  
01:12:00 16 items, big items? They're all assigned a transfer  
01:12:04 17 number, but many times the transfer didn't occur,  
01:12:06 18 correct?

01:12:07 19 A. As part of the transfer paperwork, it will --  
01:12:10 20 from what I saw in this investigation, they would have  
01:12:12 21 an additional page addendum showing that this specific  
01:12:16 22 transaction was denied.

01:12:17 23 Q. Or there would be a specific page showing the  
01:12:20 24 shipping confirmation, correct?

01:12:23 25 A. The shipping documentation primarily received

01:12:26 1 from agencies points directly who shipped them, not from  
01:12:32 2 GSA. So there were, I believe, a few denials in there,  
01:12:35 3 but I do not recall seeing specific shipping label  
01:12:39 4 documents pertaining to the transfer orders in the same  
01:12:42 5 document.

01:12:42 6 Q. Can you tell the Court exactly how many firearms  
01:12:45 7 you can with 100 percent certainty confirm were actually  
01:12:50 8 transferred?

01:12:54 9 A. Not at this time. I would have to review all of  
01:12:56 10 the data and go through all of those numbers to pinpoint  
01:13:00 11 it together.

01:13:01 12 As it pertains specifically to SIGTARP for a  
01:13:05 13 number of weapons, the emails, voice mails, and transfer  
01:13:09 14 records, and shipping labels corroborate at least 12  
01:13:12 15 handguns tied to the order numbers for that, not  
01:13:16 16 counting the other weapons that were recovered. For a  
01:13:21 17 lot of the other weapons recovered there were additional  
01:13:24 18 weapons on the same transfer order tied to the shipment  
01:13:27 19 of weapons that we did recover to include additional  
01:13:31 20 weapons that we did not recover from the same transfer  
01:13:33 21 orders.

01:13:34 22 Q. So in total right now, based off your knowledge  
01:13:37 23 of the case and the verifications that you've done in  
01:13:41 24 preparation for this hearing, how many weapons exactly  
01:13:45 25 can you confirm were transferred?

01:13:52 1 A. I can't provide a specific number at this time.

01:14:00 2 MS. BRENNAN: No further questions, Your  
01:14:02 3 Honor.

01:14:02 4 THE COURT: Okay.

01:14:03 5 MS. KOCHER: Thank you, Your Honor.

01:14:04 6 - - -

01:14:04 7 PETER SALOMON, REDIRECT EXAMINATION

01:14:04 8 BY MS. KOCHER:

01:14:04 9 Q. Agent Salomon, you said you had an idea of what  
01:14:07 10 the unidentified item was. Can you explain that idea,  
01:14:10 11 what you believed it might have been and why?

01:14:13 12 A. Yes. So I believe the unidentified items were  
01:14:17 13 possibly the shotgun lower receivers as well as a bag  
01:14:22 14 containing a lot of the handgun parts that were  
01:14:25 15 recovered from being buried.

01:14:27 16 My reasoning behind that is during the review of  
01:14:29 17 the surveillance video, Mr. Fedak was seen going in and  
01:14:33 18 out of the far trailer numerous times. And that was  
01:14:38 19 corroborated by his boss who, when we spoke to her, she  
01:14:43 20 provided that she asked him: Hey, what are you doing  
01:14:46 21 there? Because he was supposed to be working.

01:14:48 22 And he said: None of your business, or something  
01:14:50 23 along those lines.

01:14:52 24 Ultimately the items carried out of there that  
01:14:55 25 went into the truck appeared to be the same items that

01:14:58 1 went into the DBJ truck.

01:15:01 2 And then also when NCIS searched that trailer we  
01:15:03 3 found parts tied to the weapons that were recovered  
01:15:10 4 buried off of Vandalia Road. So those were in the same  
01:15:14 5 location as he had been seen coming in and out of where  
01:15:17 6 he had walked down carrying those items, placed them  
01:15:20 7 into the truck, gone around side, parked out front, got  
01:15:25 8 in the DBJ vehicle, and then proceeded to move those  
01:15:29 9 same items to the passenger's side of the DBJ truck .

01:15:32 10 Q. Can you remind the Court what the video depicted  
01:15:35 11 Mr. Fedak doing once items were placed in the front seat  
01:15:38 12 of the DBJ pickup truck?

01:15:39 13 A. So he pulled out some type of, like -- whether it  
01:15:44 14 be cloth or plastic, some type of bag-looking item and  
01:15:50 15 was in there for a few seconds placing it over things in  
01:15:54 16 the front seat.

01:16:01 17 Q. You had testified on direct about body language  
01:16:05 18 in terms of the video that we watched when he carried  
01:16:09 19 the shovel and the pickax. Was there any information  
01:16:12 20 in that that informed your idea that what he was  
01:16:15 21 carrying was different than tools as well?

01:16:18 22 A. Yes. He handled the items both coming out of  
01:16:21 23 the DBJ trailer and placed them in the truck and take  
01:16:25 24 them out of the truck and placed in the DBJ truck in a  
01:16:28 25 different way than he handled the pickax and the shovel,

01:16:31 1 both seen as him placing the shovel into the bed of the  
01:16:35 2 DBJ truck and walking through the DBJ area carrying the  
01:16:38 3 pickax and the shovel and removing the pickax from the  
01:16:42 4 vehicle.

01:16:43 5 Q. You were asked, Agent Salomon, as to whether the  
01:16:46 6 video, the nine-minute video in which he describes  
01:16:50 7 having buried the weapons off of Vandalia contained the  
01:16:53 8 specific time or date that he buried those items. Do  
01:16:59 9 you recall that question?

01:17:00 10 A. Yes.

01:17:00 11 Q. My recollection is that you said that the video  
01:17:03 12 did not contain that specific information; is that  
01:17:06 13 correct?

01:17:06 14 A. I believe so.

01:17:07 15 Q. Did you come upon more specific information  
01:17:11 16 through interviews?

01:17:12 17 A. Yes.

01:17:13 18 Q. Tell us about that.

01:17:14 19 A. So the interviews occurred -- ultimately we  
01:17:18 20 interviewed the individual who took that video as well  
01:17:21 21 as the DBJ employee and obtained the surveillance  
01:17:29 22 footage that corroborated to the general date and time  
01:17:32 23 of the timeframe we believed was inferenced in that  
01:17:37 24 video and had been solidified by those interviews and  
01:17:41 25 that data.



01:17:44 1 Q. All right. You were asked if you could, with  
01:17:47 2 100 percent certainty, tell the Court how many guns were  
01:17:51 3 transferred to Fedak. My understanding was you said  
01:17:55 4 you could not.

01:17:56 5 A. Correct.

01:17:57 6 Q. Can you with 100 percent certainty, Agent  
01:18:00 7 Salomon, tell the Court that any of the guns which have  
01:18:03 8 not been recovered were, in fact, transferred?

01:18:06 9 A. Yes.

01:18:08 10 Q. And can you give the Court an idea of how many  
01:18:11 11 that you are able to confirm were transferred?

01:18:15 12 A. So at a bare minimum there were two M16A2s; and  
01:18:22 13 the additional SIGTARP weapons; and all of the North  
01:18:27 14 Carolina list weapons; and then at least two Beretta M9s  
01:18:36 15 that Mr. Fedak had stated he watched get demilitarized  
01:18:40 16 as part of plaques and/or gifts; as well as the M14s on  
01:18:46 17 the list, which he stated they were actually just wooden  
01:18:50 18 stocks and not the full weapons themselves.

01:18:52 19 Q. Would wooden stocks bear serial numbers?

01:18:55 20 A. They may.

01:18:59 21 THE COURT: So what's the total, the bare  
01:19:01 22 minimum total of all of what you each just named?

01:19:05 23 THE WITNESS: May I have a moment to add  
01:19:06 24 these up?

01:19:06 25 THE COURT: Yes.

01:20:14 1 THE WITNESS: I believe 56, and that  
01:20:17 2 includes the ones that are tied to same transfer orders  
01:20:21 3 that were shipped, ultimately received, and/or had  
01:20:24 4 weapons seized as part of that transfer.

01:20:28 5 BY MS. KOCHER:

01:20:28 6 Q. Can you give us an example of that latter  
01:20:30 7 statement of yours?

01:20:32 8 A. Correct. So I'll use the SIGTARP weapons as an  
01:20:37 9 example.

01:20:37 10 Q. If you could reference to the line numbers on  
01:20:39 11 Exhibit 11.

01:20:40 12 A. Yes. So lines 33, 34, and 35 are three weapons  
01:20:49 13 obtained from SIGTARP, and these weapons were part of a  
01:20:56 14 shipment. We have the emails pertaining to the overall  
01:21:01 15 orders from SIGTARP. Ultimately Mr. Fedak is  
01:21:06 16 exchanging emails with the special agent who is  
01:21:09 17 responsible for shipping the items out.

01:21:12 18 Initially they say: Hey, there's going to be one  
01:21:14 19 box with six handguns in it.

01:21:17 20 And then it's: Hey, there's -- I put an order in  
01:21:20 21 for six more.

01:21:21 22 Here's six additional. There's going to be a  
01:21:24 23 second box shipped as part of this, to include the  
01:21:27 24 shipping labels having been sent out.

01:21:30 25 We know he received the boxes because we have

01:21:32 1 some of those weapons in evidence, to include weapons  
01:21:35 2 that were buried on Vandalia Road, and transferred to  
01:21:40 3 Gunther Guns.

01:21:41 4 Q. I see. Thank you.

01:21:42 5 And is that carried through then to your  
01:21:45 6 testimony when there is a transfer control number in the  
01:21:50 7 left column and, say -- just taking at the very top,  
01:21:54 8 lines 3, 4, and 5, one of that was one shipment  
01:21:59 9 presented there, and one of the guns of the three was  
01:22:04 10 recovered. So you're using that as proof that all  
01:22:10 11 three of those guns were actually transferred?

01:22:13 12 A. Are you referring to line 3 -- or 1 through 3?

01:22:17 13 Q. Three through five, yes.

01:22:20 14 A. Yes. Correct. And those M14s were what he  
01:22:24 15 referenced as being only the stocks with that particular  
01:22:28 16 shipment.

01:22:30 17 MS. KOCHER: Understood.

01:22:35 18 No further questions, Your Honor.

01:22:38 19 MS. BRENNAN: Just some brief recross.

01:22:38 20 - - -

01:22:38 21 PETER SALOMON, CROSS-EXAMINATION

01:22:45 22 BY MS. BRENNAN:

01:22:45 23 Q. The trailer that you're referencing that the  
01:22:48 24 objects came out of, you searched that trailer?

01:22:50 25 A. Yes.

01:22:50 1 Q. Contained also in that trailer was numerous pipe  
01:22:53 2 fittings, pipes, things that were utilized by DBJ for  
01:22:58 3 job site work, correct?

01:22:59 4 A. Yes.

01:23:08 5 Q. So again, you do not know exactly what was  
01:23:11 6 removed from that trailer?

01:23:13 7 A. Correct.

01:23:27 8 MS. BRENNAN: No further questions, Your  
01:23:29 9 Honor.

01:23:29 10 THE COURT: Okay. Thank you very much.

01:23:34 11 THE WITNESS: Thank you, ma'am.

01:23:34 12 THE COURT: I'd like to take a lunch. Is  
01:23:40 13 anyone adverse to that?

01:23:41 14 MS. BRENNAN: I'm not, Your Honor. Can I  
01:23:42 15 submit one exhibit we have? Or I'm happy -- it relates  
01:23:46 16 to this.

01:23:47 17 THE COURT: Sure. And what is this?

01:24:05 18 MS. BRENNAN: Your Honor, this is a  
01:24:06 19 polygraph we had done of Mr. Fedak, in fact, this past  
01:24:11 20 fall/summer prior to entering into a plea agreement with  
01:24:15 21 the government that resulted in the dismissal of the  
01:24:19 22 obstruction charge. We had him polygraphed in regards  
01:24:22 23 to when the guns were initially buried. And he was  
01:24:26 24 found to be truthful, in fact, that he did bury the guns  
01:24:31 25 in December, which aligns with the statement that he

01:24:34 1 buried them initially there, and then in February of  
01:24:38 2 this past year went to see where they were located so  
01:24:42 3 that he could, in fact, turn them over to law  
01:24:45 4 enforcement.

01:24:45 5 THE COURT: So we'll call this, because it  
01:24:48 6 doesn't have a label, we'll call this Defendant's  
01:24:51 7 Exhibit 1.

03:29:57 8 (Whereupon Defendant's Exhibit 1 is admitted  
03:30:00 9 into evidence.)

01:24:51 10 MS. BRENNAN: Thank you, Your Honor.

01:24:55 11 THE COURT: Well, I'd like to see you all at  
01:24:58 12 1:30.

01:24:59 13 Is that all right, Ms. Kocher?

01:25:00 14 MS. KOCHER: It is, Your Honor. If I could  
01:25:02 15 go ahead and move to admit the 11 exhibits that were  
01:25:05 16 referenced.

01:25:06 17 THE COURT: Let them be received.

01:25:43 18 (Whereupon Government's Exhibits 1 through  
03:29:59 19 11 are admitted into evidence.)

01:25:44 20 (Recess taken.)

01:25:50 21 THE COURT: Ms. Kocher, is there any further  
02:48:37 22 evidence to be offered?

02:48:39 23 MS. KOCHER: No, Your Honor.

02:48:40 24 THE COURT: Do you have any evidence?

02:48:42 25 MS. BRENNAN: Nothing beyond what we

02:48:44 1 submitted to the Court prior to the recess.

02:48:49 2 THE COURT: Well, I guess we'll start with  
02:48:51 3 Ms. Kocher in argument.

02:48:52 4 MS. KOCHER: Thank you, Your Honor.

02:48:54 5 As to the obstruction and acceptance of  
02:48:59 6 responsibility, the record, we believe, shows that Mr.  
02:49:06 7 Fedak has lied in many different ways and with many  
02:49:12 8 different effects.

02:49:14 9 And, Your Honor, it reminds me of the  
02:49:18 10 microscope guessing game that we used to play where they  
02:49:20 11 would bring the microscope down so close to an object,  
02:49:24 12 and you were supposed to guess what you saw. And you  
02:49:26 13 would see, for instance, a series of sand dunes, and  
02:49:32 14 then a frothy surf hitting up against them. And as  
02:49:37 15 they pull the microscope back, it's actually the tip of  
02:49:38 16 a sharpened pencil. And the undulations of the dune  
02:49:42 17 were the shaved area that had striations on it, then the  
02:49:46 18 frothy surf was the scallop where the shaved area meets  
02:49:52 19 the color of the pencil.

02:49:53 20 That is what Mr. Fedak has done throughout  
02:49:57 21 this case from the beginning, is to point to a  
02:50:00 22 particular fact and claim that it's wrong, so much and  
02:50:04 23 so frequently that he's lost sight of what he's said in  
02:50:08 24 the past so that even his lies are disagreeing with one  
02:50:11 25 another.

02:50:12 1 Just very quickly; I know you were attentive  
02:50:15 2 during that lengthy evidence presentation. And it was  
02:50:18 3 just samples, literally just three main points: the  
02:50:22 4 California titling of the Mercedes, the burial of the  
02:50:25 5 weapons, and what has happened with those weapons.

02:50:28 6 There were -- you know, noting he had  
02:50:29 7 counsel as early as 2019 in regard to this overarching  
02:50:34 8 investigation with the statement that he called the  
02:50:38 9 person that he told us in interview that he had given  
02:50:41 10 all the guns to -- less than 30 days, Your Honor, that  
02:50:44 11 would be -- asking for those guns back. So he told us  
02:50:46 12 in interview that it was December of '19 that he called  
02:50:50 13 Sergeant Major McKinney to ask for the guns back.

02:50:53 14 The last time -- and you can look at the  
02:50:56 15 last gun referenced in Chart 11 -- that he, Fedak,  
02:51:03 16 received a gun that he then told us he gave to McKinney  
02:51:06 17 was on November 25th of the same year, of 2019. So  
02:51:11 18 less than 30 days later. And by that statement he was  
02:51:14 19 prepared to turn the guns in. And here we are almost  
02:51:17 20 four years later now, over three years in any event, and  
02:51:20 21 still don't have the guns back.

02:51:23 22 The Mercedes papers speak for themselves.  
02:51:26 23 There is a specific bill of sale that Patrick Fedak  
02:51:29 24 signed, no matter who signed Antonio Gonzalez's name,  
02:51:34 25 that he paid Antonio Gonzalez \$1,500.

02:51:38 1 The statement, for instance, in that same  
02:51:39 2 package that he obtained that car while he was stationed  
02:51:42 3 in California.

02:51:43 4 I could go on and on with these types of  
02:51:45 5 examples, Your Honor.

02:51:46 6 The conflicting statements he made in regard  
02:51:48 7 to burial. That at first it -- they were at DBJ, and he  
02:51:54 8 wanted to remove them from DBJ. And in objections and  
02:51:57 9 to the Court he says that he actually buried them back  
02:52:00 10 in 2000. Your Honor's been given a polygraph that  
02:52:04 11 would show no deception -- by the way, not necessarily  
02:52:06 12 truthfulness. But polygraphs, of course, are not  
02:52:11 13 admissible and it is of no -- particularly in light of  
02:52:14 14 the other falsehoods that have been brought to the  
02:52:18 15 Court's attention.

02:52:21 16 He specifically said during interview that  
02:52:25 17 other than those guns that have been recovered -- either  
02:52:27 18 from him, from his father, from the few out in  
02:52:30 19 California that were recovered, and those that were  
02:52:33 20 buried -- that he did not have involvement. Not simply  
02:52:36 21 that he didn't know where they were currently located.  
02:52:39 22 That doesn't even make sense in the context of a debrief  
02:52:42 23 following a plea, Your Honor. He did not know; he  
02:52:46 24 claimed he did not know. He wasn't involved with them.  
02:52:49 25 And he had handed over all the North Carolina guns, in



02:52:52 1 particular, that weren't recovered to that Sergeant  
02:52:54 2 Major McKinney, who just refused to give them back less  
02:52:58 3 than 30 days later.

02:52:59 4           There were voice mails, Your Honor.    The  
02:53:01 5 fact that we recovered guns from the various shipments  
02:53:04 6 and then not others in that same shipment does, again,  
02:53:08 7 go to the falsehoods said to us, the denial of  
02:53:14 8 responsibility in all of this.

02:53:15 9           Your Honor, I have not seen someone who has  
02:53:20 10 made from whole cloth so many details about the case  
02:53:26 11 that are -- I mean, even the videos.    It is there.  
02:53:31 12 While you don't see the guns, that is true, it is  
02:53:34 13 certainly not a shovel or a pickax.    The guns were not  
02:53:38 14 in a condition such that they had been buried more than  
02:53:43 15 a year.

02:53:43 16           I say all of this, Your Honor -- and you  
02:53:45 17 haven't ruled.   Do you want me to go on then to my  
02:53:49 18 sentencing position, or do you want to rule on the  
02:53:50 19 objections and then --

02:53:52 20           THE COURT:   I think we ought to address the  
02:53:56 21 objections first.

02:53:58 22           MS. KOCHER:   All right.   In that case, Your  
02:54:00 23 Honor, I would stop there.

02:54:00 24           I just believe that by far more than a  
02:54:05 25 preponderance the bulk of the evidence in the case

02:54:08 1 presented in the PSR and as you heard today indicate  
02:54:15 2 obstruction.

02:54:16 3 And not forgetting too the violative conduct  
02:54:20 4 while on release where he lied to the probation officer.

02:54:24 5 All of those considerations would support  
02:54:28 6 the Court enhancing a sentence with the obstruction of  
02:54:34 7 justice and taking away the acceptance of  
02:54:37 8 responsibility.

02:54:37 9 THE COURT: Okay.

02:54:39 10 MS. BRENNAN: Thank you, Your Honor.

02:54:41 11 I think it's interesting that the government  
02:54:43 12 indicates that Mr. Fedak made with whole cloth so many  
02:54:48 13 details, because it sounds to me it's very similar to  
02:54:53 14 what the agent was surmising from his view of the video.  
02:54:59 15 He said directly on the stand he could not see the  
02:55:02 16 items, but he surmises that it must have been a gun.  
02:55:07 17 He told the Court he went to a job site before he went  
02:55:11 18 to the location of where the firearms were apparently  
02:55:14 19 buried. If he was so concerned with concealing these  
02:55:17 20 items, it makes no sense that he would go from picking  
02:55:21 21 the items up to a job site and then to bury them.

02:55:26 22 So, Your Honor, I would submit that the  
02:55:29 23 government's version of events for that simply doesn't  
02:55:32 24 make sense.

02:55:34 25 I believe they are picking one or two

02:55:36 1 details out here and there and choosing to use them and  
02:55:41 2 bend them in ways that -- Mr. Fedak certainly is here to  
02:55:45 3 accept responsibility and --

02:55:47 4 THE COURT: Would you say going to the job  
02:55:52 5 site sort of adds a cloak of authenticity to the need  
02:55:56 6 for the tools or to just present him doing work as  
02:56:02 7 usual?

02:56:04 8 MS. BRENNAN: If you believe that they were  
02:56:06 9 firearms. But I would submit that there is no evidence  
02:56:11 10 that what he took from that storage unit, which,  
02:56:15 11 according to the government's testimony -- witness's  
02:56:20 12 testimony, had items utilized by DBJ for work at job  
02:56:25 13 sites, I would submit they have zero evidence that what  
02:56:29 14 he took from there is actually firearms pieces.

02:56:32 15 And quite to the contrary, we did submit to  
02:56:34 16 the Court a polygraph. And although the government  
02:56:38 17 would say that they're not admissible, Your Honor, I  
02:56:43 18 would draw the Court's attention to page 4, Section K.

02:56:47 19 THE COURT: Let me get that back in front of  
02:56:48 20 me. The clerk has -- I think you've got that, Marsha.  
02:56:53 21 Do you have the exhibits from this morning? Could I  
02:57:01 22 have them?

02:57:02 23 All right. So you said page --

02:57:05 24 MS. BRENNAN: Well --

02:57:07 25 THE COURT: What were you referring to?

02:57:09 1 MS. BRENNAN: I was referring to the  
02:57:10 2 government's comment that that was inadmissible, when  
02:57:13 3 the very plea agreement that they offered to us actually  
02:57:16 4 contains a paragraph that requires him to submit to a  
02:57:21 5 polygraph examination; "the results of these  
02:57:24 6 examinations will be admissible only at the defendant's  
02:57:27 7 sentencing and any hearing as to whether there has been  
02:57:31 8 a breach of this agreement."

02:57:33 9 And, Your Honor, I would submit we are  
02:57:34 10 submitting this at sentencing to demonstrate that he did  
02:57:37 11 not, in fact, breach the agreement in the way that the  
02:57:40 12 government believes that he breached the agreement.

02:57:43 13 Your Honor, he was truthful.

02:57:45 14 Did he bury the firearms? Yes. There's  
02:57:48 15 no argument there. It was a regrettable mistake.

02:57:52 16 But he didn't bury them -- and frankly, it  
02:57:56 17 doesn't make any sense. Why would an individual who had  
02:57:59 18 signed a plea agreement to cooperate, in part knowing  
02:58:04 19 that part of that was to turn over the firearms, go bury  
02:58:08 20 the firearms? It frankly just doesn't make any sense.  
02:58:12 21 I mean, he would have at that time -- was doing exactly  
02:58:14 22 what he promised to do; he was confirming the location  
02:58:18 23 of the firearms where he remembered burying them so that  
02:58:21 24 he could turn them over in accordance with his plea  
02:58:24 25 agreement.

02:58:24 1 So, Your Honor, it's difficult, I get, when  
02:58:31 2 someone has been dishonest in one way to sort of parse  
02:58:35 3 it out, other statements that he made.

02:58:41 4 Did he have any right to acquire that  
02:58:46 5 vehicle? He didn't. And he did take steps to insure  
02:58:50 6 that he could acquire it, take title to it, and dispose  
02:58:53 7 of it, and sell it eventually. And part of his  
02:58:57 8 admission here in pleading guilty was admitting that  
02:59:01 9 conduct.

02:59:02 10 But, Your Honor, that all happened prior to  
02:59:05 11 him entering a plea agreement. The government was well  
02:59:08 12 aware of that conduct when they brought the charges.  
02:59:11 13 So I don't believe that that conduct rises to the level  
02:59:14 14 of obstruction; I do not believe that -- and certainly  
02:59:19 15 not loss of acceptance. And I don't believe his  
02:59:22 16 actions with the firearms rise to the level of  
02:59:25 17 obstruction or loss of acceptance.

02:59:27 18 I believe he is entitled to his three levels  
02:59:30 19 for acceptance of responsibility. I do not believe an  
02:59:32 20 enhancement for obstruction of justice is appropriate.  
02:59:35 21 Thank you.

02:59:47 22 THE COURT: Did you want to respond, Ms.  
02:59:49 23 Kocher?

02:59:49 24 MS. KOCHER: Your Honor, only to the extent  
02:59:53 25 that the Mercedes is mentioned to establish the

02:59:58 1 untruths, not that the pre-plea conduct itself is  
03:00:04 2 obstructive or would show the acceptance of  
03:00:08 3 responsibility. Rather, those are putting in context,  
03:00:11 4 in part, why we believe everything else that he's said  
03:00:13 5 since then is untruthful, because that is what he's  
03:00:17 6 done. That would be the government's point.

03:00:21 7 THE COURT: He told his wife that his  
03:00:23 8 attorney told him to bury the firearms.

03:00:25 9 MS. KOCHER: That's correct.

03:00:25 10 MS. BRENNAN: He did, Your Honor.

03:00:31 11 THE COURT: And that kind of got that  
03:00:32 12 attorney in trouble for a while, didn't it?

03:00:35 13 MS. BRENNAN: That attorney ultimately  
03:00:37 14 withdrew from the case. It did create a conflict.  
03:00:40 15 That statement and the video that this Court saw was in  
03:00:46 16 the midst of a very difficult period in their marriage  
03:00:51 17 and separation. They were in the middle of a fight.  
03:00:54 18 His wife was understandably upset when things came to  
03:00:58 19 the table. That conversation actually happened the  
03:01:02 20 evening after his wife and he had sat down with that  
03:01:07 21 attorney, and his wife really learned the full breadth  
03:01:11 22 of everything. And she informed him that she was  
03:01:15 23 leaving him, that he was going to need to leave; they  
03:01:18 24 were separating. And he said some things that night  
03:01:21 25 that were dishonest to his wife, really because he was

03:01:26 1 in fear of what that meant for his marriage.

03:01:29 2 So, Your Honor, I understand. Like I  
03:01:35 3 said -- and I do understand what the government is  
03:01:37 4 saying. It's difficult to parse out. But I can say  
03:01:41 5 that we have offered evidence that he was, in fact,  
03:01:43 6 truthful about when he buried the firearms. And if  
03:01:46 7 that's what they're relying upon for the basis of  
03:01:49 8 obstruction or loss of acceptance of responsibility, I  
03:01:52 9 don't think that's appropriate.

03:01:53 10 And I will also note that the plea agreement  
03:01:56 11 that he signed did occur after the alleged conduct in  
03:02:01 12 February of '22.

03:02:05 13 And so I do think he's entitled to  
03:02:09 14 acceptance of responsibility for his role in the  
03:02:10 15 offense. And he is here today to accept responsibility  
03:02:14 16 for that.

03:02:16 17 THE COURT: The irony is: That burying that  
03:02:21 18 he did resulted in a whole new charge being brought  
03:02:24 19 against him, and it undid the plea agreement that was in  
03:02:29 20 effect before he went and buried the firearms, right?

03:02:33 21 MS. BRENNAN: Well, actually, the initial  
03:02:36 22 burying occurred well before the plea agreement. The  
03:02:39 23 actions and his comments about where the firearms were  
03:02:42 24 and all that, that's what ultimately undid --

03:02:45 25 THE COURT: It's a pattern. This is a

03:02:48 1 pattern throughout the period of this man's life that's  
03:02:52 2 in front of me for consideration. He thinks a lie  
03:02:59 3 achieves a good or better goal.

03:03:01 4 MS. BRENNAN: I think --

03:03:03 5 THE COURT: Saving his marriage, working  
03:03:05 6 with his father, developing the esteem and reliance of  
03:03:12 7 those in the military with him. You know, saving his  
03:03:17 8 skin in this case. He gets rid of the guns. That's a  
03:03:23 9 better decision? And throw his lawyer under the bus to  
03:03:27 10 the wife because he's going to keep his relationship  
03:03:30 11 with her, maybe, that way. It's just boom, boom, boom,  
03:03:33 12 boom.

03:03:33 13 And I know there are mental health issues.  
03:03:35 14 And that's probably one of the best things you've got  
03:03:38 15 going for you in terms of a variance.

03:03:43 16 MS. BRENNAN: And I do think that what you  
03:03:45 17 see during the sort of -- well, if you start in 2017,  
03:03:49 18 and you take it all the way up to '22, really this  
03:03:53 19 five-year period is a slow unravelling and compounding  
03:03:58 20 and really somebody who is just -- has got himself in  
03:04:03 21 over his head and is ill-equipped due to his mental  
03:04:07 22 health issues to make the proper decisions and has  
03:04:11 23 really compounded the situation at every step of the  
03:04:14 24 way.

03:04:14 25 THE COURT: And he does it as recently as a



03:04:16 1 couple weeks ago when he lies to his probation officer  
03:04:19 2 about where he really is on the day of December 26th,  
03:04:24 3 right?

03:04:25 4 MS. BRENNAN: And he does. So my  
03:04:27 5 understanding of the chain of events there is he did  
03:04:30 6 go -- he spent Christmas Eve, Christmas Day, and the day  
03:04:34 7 after Christmas, the large part of the day, with his  
03:04:37 8 family. His children left Christmas the 26th, the  
03:04:43 9 afternoon.

03:04:44 10 THE COURT: You're enabling him. It's  
03:04:47 11 going to be another one of these excuses, a lie to  
03:04:50 12 achieve something. He couldn't see his children; they  
03:04:56 13 were gone. But he could go see Ms. Pruitt in Raleigh,  
03:05:01 14 even though there's a pending motion you correctly made  
03:05:04 15 for permission for him to see Ms. Pruitt, which  
03:05:07 16 ultimately got denied.

03:05:08 17 MS. BRENNAN: That's actually what I was  
03:05:10 18 going to say. Interestingly enough, unlike the prior  
03:05:13 19 time when I called him, he was very upfront with me.  
03:05:18 20 He said: You know what; I messed up. I shouldn't have  
03:05:23 21 done it. This is what I did, and this is where I went,  
03:05:26 22 and I've really got myself in trouble now.

03:05:28 23 THE COURT: And he's so upfront with you  
03:05:31 24 because we've got it on electronic monitoring, and maybe  
03:05:34 25 it finally dawns on him that he's got to come clean

03:05:37 1 because we're going to figure out where he was.

03:05:40 2 All of these objections are overruled.

03:05:44 3 Now, that doesn't mean that I'm going to  
03:05:47 4 sentence him in the guideline range that I just found.  
03:05:51 5 But this gentleman, he obstructed justice. He is not  
03:05:54 6 entitled to acceptance of responsibility. He has,  
03:05:59 7 again, royally messed up.

03:06:03 8 Fifty-one to 63 months is what the advice  
03:06:05 9 is.

03:06:05 10 But I've got to decide a sentence that's  
03:06:08 11 reasonable, not greater than what it needs to be, as we  
03:06:11 12 all know, to accomplish the factors in 18, United States  
03:06:15 13 Code, Section 3553.

03:06:17 14 And I think we ought to move on to that, if  
03:06:20 15 I've covered, albeit not in the way that you would wish,  
03:06:25 16 but if there's anything else that bears on the advice of  
03:06:28 17 the guidelines.

03:06:29 18 MS. BRENNAN: Certainly, Your Honor. I'm  
03:06:31 19 happy to make argument regarding 3553.

03:06:34 20 THE COURT: Let's hear from Ms. Kocher  
03:06:35 21 first, because I cut her off a few minutes ago and said  
03:06:40 22 let's do this. We've done it. It's finished. This is  
03:06:41 23 what the advice is.

03:06:42 24 You go to what the sentence should be, then  
03:06:44 25 I want to hear from you, and I want to hear from your

03:06:47 1 client.

03:06:47 2 MS. KOCHER: Thank you, Your Honor.

03:06:48 3 The sentencing memorandum, as you referenced  
03:06:51 4 at the beginning of this session, is one of the most  
03:06:54 5 thorough memorandums I have seen.

03:06:57 6 THE COURT: I've never read one that was  
03:06:59 7 more thorough. And this lawyer has so zealously  
03:07:03 8 represented her client.

03:07:06 9 MS. KOCHER: And I think it correctly points  
03:07:08 10 out a number of things about the defendant's history and  
03:07:13 11 past that -- all of the memo is, of course, appropriate  
03:07:17 12 for your consideration. But I don't, with my words that  
03:07:20 13 are yet to come, I do not mean to belittle in any way  
03:07:25 14 the service that Mr. Fedak gave to the country, the  
03:07:30 15 injuries that he suffered, and the tremendous impact  
03:07:33 16 that had both on him personally and on his life.

03:07:38 17 That being said, however, Your Honor,  
03:07:42 18 whether the root of where he is now -- or rather,  
03:07:51 19 assuming the root of where he is now is a result of a  
03:07:54 20 mental illness -- which, by the way, the report only  
03:07:57 21 gives an impression. It actually -- the psychologist  
03:08:01 22 report that's in doesn't actually give diagnoses. She  
03:08:04 23 gives clinical impressions.

03:08:06 24 And just on a note, much of what she reports  
03:08:09 25 there is based on Mr. Fedak's own representations. And

03:08:12 1 I hope -- I don't know which way to hope, actually, in  
03:08:18 2 regard to the childhood allegations and those types of  
03:08:21 3 things. But what I believe to be true is this is the  
03:08:24 4 same individual that I've just gone over all these lies  
03:08:27 5 with. So the psychologist's report is limited by that  
03:08:31 6 fact, that what she was relying on was his self-report  
03:08:36 7 on that ACE evaluation for those childhood things.  
03:08:40 8 Again, not saying that there aren't issues.

03:08:44 9 What I do believe to be true, Your Honor,  
03:08:47 10 even if the root is mental illness or PTSD, that an  
03:08:52 11 individual has to hit bottom; that is, come to where  
03:08:55 12 they don't want to be anymore. And to realize, whether  
03:08:58 13 it's some type of mental illness that has brought me  
03:09:01 14 here, whether it's a drug addiction, Mr. Fedak has been  
03:09:06 15 in -- in fact, she, the psychologist, talked about the  
03:09:10 16 support he's now receiving from the Veterans  
03:09:12 17 Administration and the counseling he's in. And but for  
03:09:16 18 the one virtual group that he would have to attend  
03:09:21 19 because it doesn't meet locally, I believe that she  
03:09:24 20 totally agreed that the treatment plan he's in and the  
03:09:26 21 medication he's on appear to be a very appropriate  
03:09:28 22 treatment plan. She was concerned about interrupting  
03:09:30 23 that.

03:09:30 24 Well, Your Honor, that treatment plan has  
03:09:32 25 been in place for a good number of months now. And yet

03:09:35 1 just a few weeks ago he followed the same path; did a  
03:09:43 2 wrongdoing, lied about it. And only when confronted  
03:09:46 3 with the fact "you've got a monitoring bracelet on your  
03:09:52 4 ankle" did he come forward.

03:09:54 5 For all of those reasons, for the breadth of  
03:09:57 6 the conduct here, for the fact that we still have at  
03:09:59 7 least 30 guns at a conservative count -- and the agent  
03:10:04 8 did testify he believes all 66 guns were received by  
03:10:09 9 Fedak. Many of those, more than 30, are still  
03:10:14 10 somewhere.

03:10:15 11 And the agent has gone, even after the  
03:10:19 12 debrief, went and was able to track down one more gun.  
03:10:24 13 And it's just a constant thing.

03:10:27 14 But I think the guidelines have this one  
03:10:28 15 right.

03:10:30 16 I think he needs care, absolutely. And  
03:10:34 17 that can be received, in fact, perhaps even at a better  
03:10:40 18 level, within the Bureau of Prisons, who understands  
03:10:43 19 this type of conduct, this type of impact on one's  
03:10:49 20 living choices, and how things go forward.

03:10:51 21 And, in short, I don't believe that the  
03:10:55 22 considerations regarding his history in light of his  
03:11:01 23 ongoing conduct provide a basis for mitigation,  
03:11:08 24 particularly much below that guideline range that has  
03:11:15 25 been determined by the Court.

03:11:19 1 THE COURT: Okay.

03:11:21 2 MS. BRENNAN: Thank you, Your Honor. I will  
03:11:24 3 not belabor the numerous points that we made in our  
03:11:27 4 sentencing memo. It was extensive. But I would like  
03:11:30 5 to highlight some things and draw a few connections.

03:11:34 6 We are proposing a non-incarceration  
03:11:37 7 sentence today. We're proposing that. And probation is  
03:11:42 8 punishment if it is meaningfully and thoughtfully  
03:11:46 9 constructed. And we think this is one of those cases  
03:11:49 10 that it can be and it should be.

03:11:52 11 One of the biggest benefits that society  
03:11:55 12 sees from incarcerating an individual is protecting the  
03:11:59 13 public from a dangerous person. And while there can be  
03:12:03 14 rehabilitative aspects of incarceration, we do not  
03:12:07 15 incarcerate people to treat them or to rehabilitate  
03:12:10 16 them. We incarcerate solely for punishment, and to  
03:12:15 17 separate, and to send a message.

03:12:17 18 Here there is no need for separation from  
03:12:19 19 society, nor is incarceration needed for specific or  
03:12:23 20 general deterrence, and it's not needed for treatment or  
03:12:27 21 punishment here.

03:12:29 22 The sentence we are proposing and submit in  
03:12:32 23 the sentencing memo meets all the goals of 3553,  
03:12:37 24 properly accounts for the sentencing factors, and is one  
03:12:42 25 that this Court should consider sufficient but not

03:12:44 1 greater than necessary.

03:12:46 2 I'd like to talk about first how the  
03:12:49 3 sentence we're proposing addresses the goals of  
03:12:51 4 sentencing, and then move very briefly into why it's  
03:12:54 5 appropriate given his history and characteristics and  
03:12:58 6 the nature and circumstances of the offense.

03:13:01 7 First, the sentence we're proposing meets  
03:13:03 8 the goals of punishment. It reflects the seriousness of  
03:13:06 9 the offense and helps promote respect for the law  
03:13:09 10 because probation does curtail one's freedoms.

03:13:13 11 We are proposing that as a part of probation  
03:13:15 12 he be given a period of home detention or home  
03:13:19 13 confinement. This Court can impose up to a year of  
03:13:23 14 home confinement. He is already on a bracelet. We  
03:13:27 15 would propose that that continue.

03:13:29 16 We are proposing that he be required to  
03:13:31 17 complete, after the home confinement period is done, a  
03:13:35 18 period of community service, however many hours this  
03:13:38 19 Court deems necessary. And the Court could direct  
03:13:41 20 those to specifically address the concerns that his  
03:13:45 21 conduct raise. It could require him to speak to  
03:13:49 22 individuals who are in the military, specifically  
03:13:53 23 individuals who are involved in supply chain management  
03:13:56 24 in the military.

03:13:57 25 Your Honor, those would be two ways the

03:14:02 1 Court could utilize a probationary punishment to not  
03:14:05 2 only rehabilitate, but to generally deter others.  
03:14:10 3 Specifically as it goes to deterrence, both general and  
03:14:13 4 specific, this prosecution, his military discharge, 22  
03:14:20 5 days spent in jail, they have provided deterrence for  
03:14:25 6 him to ever commit something like this again. That also  
03:14:32 7 provides general deterrence.

03:14:35 8           The Court received numerous letters from  
03:14:37 9 individuals that he was in contact with in the military,  
03:14:41 10 people that he had worked with, served under. And all  
03:14:47 11 of those individuals, one, were very complimentary, of  
03:14:50 12 course, of his -- of their interactions with him; were  
03:14:55 13 shocked at this conduct. And they all know that he got  
03:14:58 14 discharged. And every one of those individuals has  
03:15:01 15 contacts within the military. And so you can be sure  
03:15:05 16 that Mr. Fedak's story doesn't stop in this courtroom.  
03:15:10 17 It didn't stop with his UCMJ discharge. It's filtered  
03:15:14 18 out already.

03:15:19 19           And he was so close to retirement, to his 20  
03:15:21 20 years where he would have been eligible for full  
03:15:24 21 benefits, and he lost a significant amount of that  
03:15:27 22 through this prosecution.

03:15:30 23           Additionally, he's lost his ability to vote,  
03:15:35 24 at least temporarily; to serve public office; to ever  
03:15:38 25 possess a firearm again. And those are rights that he



03:15:43 1 held prior to entering his plea here and that he held  
03:15:46 2 valuable and that members of the military, individuals  
03:15:49 3 who we want to deter from committing this type of  
03:15:53 4 offense, those are rights and privileges that they hold  
03:15:57 5 dear.

03:15:57 6 So, Your Honor, sending him to prison is not  
03:16:03 7 necessary to meet the goal of deterrence.

03:16:07 8 Treatment. It's not necessary for him to go  
03:16:11 9 into a BOP facility for treatment. I would have to  
03:16:14 10 disagree with Ms. Kocher's assessment that he can get  
03:16:19 11 better care in the Bureau of Prisons. I would like to  
03:16:21 12 think that our veterans and the access that he has out  
03:16:28 13 here through his VA benefits are far superior to  
03:16:32 14 anything that he would receive in the Bureau of Prisons  
03:16:35 15 and are specifically formulated to address individuals  
03:16:41 16 with his type of PTSD, combat-related; his traumatic  
03:16:48 17 brain injury. They are doctors that are trained and  
03:16:51 18 have worked with hundreds if not thousands of other  
03:16:56 19 individuals who have returned from war with those type  
03:16:59 20 of injuries. That is certainly something that the  
03:17:02 21 Bureau of Prisons sees, I would think, on a very rare  
03:17:09 22 basis.

03:17:10 23 So, Your Honor, I believe he's going to  
03:17:12 24 receive much better treatment out in the community.  
03:17:16 25 And I believe that Dr. Sapia's assessment that she

03:17:19 1 provided to the Court indicated as much. And also  
03:17:23 2 indicated that, in fact, sending him to prison could  
03:17:25 3 have a detrimental effect on his mental health both  
03:17:28 4 while in custody and on his ability to regain and  
03:17:31 5 reestablish himself once he was out of custody.

03:17:34 6 Your Honor, as I previously stated, his  
03:17:37 7 detention in a prison is not necessary to protect the  
03:17:41 8 public. He's certainly not a danger in the classic  
03:17:44 9 sense of the word. And his discharge from the military  
03:17:47 10 removed any danger that he would ever be able to commit  
03:17:50 11 this type of offense again.

03:17:52 12 So, Your Honor, we submit that the proposed  
03:17:54 13 sentence meets all the goals of sentencing. And we also  
03:17:57 14 submit that it accounts for his history and  
03:18:00 15 characteristics, and the nature and circumstances of the  
03:18:03 16 offense. That is where the memo really hits home. It  
03:18:08 17 goes into great detail.

03:18:10 18 But I would just say that I have represented  
03:18:12 19 a number of individuals who have been in the military  
03:18:17 20 prior to representing the individual in this courtroom.  
03:18:21 21 I spent a number of years doing the misdemeanor docket  
03:18:24 22 down in Fort Bragg. I actually did that docket from  
03:18:28 23 roughly 2007 to about 2012. And that was when a lot of  
03:18:34 24 service members were coming back with PTSD, TBI. Of  
03:18:41 25 course, the misdemeanor docket focuses mostly on DWIs

03:18:45 1 and that type of stuff, but I had a lot of guys come  
03:18:48 2 through who had served overseas and had gotten awards.  
03:18:52 3 I never had an individual with the number of service  
03:19:02 4 commendations and awards that Mr. Fedak had.

03:19:06 5 And I talked to many individuals that served  
03:19:10 6 with my clients. None had the level of respect that he  
03:19:15 7 seemed to have garnered from other individuals that  
03:19:18 8 served with him.

03:19:20 9 And he was in combat zones in the time that  
03:19:25 10 our country was in one of the most violent conflicts  
03:19:30 11 since Vietnam. He was in Fallujah. He was getting  
03:19:35 12 shot at, bombed, IEDs. It was traumatic. And I do  
03:19:44 13 think that that bears considering when we are deciding  
03:19:50 14 what the appropriate punishment is, particularly when  
03:19:55 15 Dr. Sapia's report draws such a strong connection from  
03:20:00 16 his service-related injuries to the conduct here and to  
03:20:06 17 his errors in judgment.

03:20:12 18 Your Honor, we are asking for a probationary  
03:20:15 19 sentence today because it's the right result, given his  
03:20:18 20 history and characteristics and the nature of the  
03:20:20 21 offense. We are asking for a probationary sentence and  
03:20:24 22 not an active sentence because that is what would be  
03:20:27 23 best for his mental health, his treatment, what would be  
03:20:32 24 best for his family and his family's financial  
03:20:35 25 situation. We're asking for a probationary sentence not

03:20:39 1 as a pass. We're asking for it as a punishment for his  
03:20:45 2 conduct. And we're asking the Court to craft that  
03:20:47 3 sentence in a way that it has a strong punishment aspect  
03:20:52 4 to it, including the home detention, including community  
03:20:56 5 service. And we believe that is the only sentence that  
03:21:00 6 is sufficient but not greater than necessary in this  
03:21:03 7 case.

03:21:04 8 THE COURT: Okay. Thank you.

03:21:10 9 Mr. Fedak, would you like to say anything?

03:21:14 10 THE DEFENDANT: Yes, Your Honor.

03:21:16 11 Good morning, Your Honor. First, I'd like  
03:21:21 12 to apologize for my actions for this country and also  
03:21:26 13 for not fully upholding responsibilities I had while I  
03:21:29 14 was in the armed services.

03:21:31 15 I would like to apologize to my family. I  
03:21:34 16 know they're all working. I asked them; they really  
03:21:37 17 wanted to come, but it's a Friday morning, and it's a  
03:21:40 18 three-hour drive. But I really wanted to make sure  
03:21:43 19 that they know that I apologize to them for my actions.

03:21:47 20 I take full responsibility for my  
03:21:49 21 transactions. I'm not here to deny that. At the time  
03:21:52 22 my intentions were good, but my conduct fell way short.  
03:21:56 23 I was entrusted to insure proper measures were in place,  
03:22:01 24 and I completely failed that. I failed my job as a  
03:22:04 25 supply officer, and the armed services, and pretty much

03:22:07 1 this country, ma'am.

03:22:09 2           Due to this failure I received an  
03:22:12 3 other-than-honorable discharge. I lost my retirement 30  
03:22:16 4 days before I was eligible. I was still on postsurgery  
03:22:21 5 recovery when this all happened. These consequences  
03:22:25 6 greatly affected everything in my life. I was not  
03:22:29 7 briefed of my discharge until two days prior, and I was  
03:22:33 8 still on bed rest, and I got told I had to come in and  
03:22:36 9 check out of the military.

03:22:37 10           I was, like: Okay; what happened?

03:22:39 11           And so I had three days to check out of the  
03:22:41 12 Marine Corps before my EAS, losing all my benefits, not  
03:22:46 13 doing any of my disability rating or financial support.  
03:22:52 14 Three days later I was out, and I was a normal civilian  
03:22:56 15 with an other-than-honorable discharge.

03:22:59 16           That greatly impacted my family and myself,  
03:23:02 17 losing that income and support. We had to uproot and  
03:23:05 18 move closer to family to have that support and rebuild a  
03:23:11 19 life not only for myself and my family, but also our  
03:23:14 20 kids.

03:23:15 21           Outside of the embarrassment of the  
03:23:18 22 other-than-honorable discharge, once you're discharged  
03:23:21 23 from the military with an other-than-honorable, you  
03:23:25 24 don't get any financial loans or grants that are given  
03:23:29 25 to veterans; you have no benefits for the veterans, no

03:23:32 1 medical or mental health. So I was pretty much on my  
03:23:35 2 own for almost a year until my benefits finally got  
03:23:38 3 approved based on my enlistment honorable service for 13  
03:23:43 4 years. So because of that I was able to get my  
03:23:46 5 veteran's benefits, and I was able to start my mental  
03:23:51 6 health re -- what I could do, because I was -- they had  
03:23:54 7 me on medication that was wrong, so I know that for a  
03:23:56 8 fact, and now I believe I'm on the right treatment.

03:23:59 9 I humbly plea for a non-active sentence as I  
03:24:04 10 continue to regain the trust of my family, this Court,  
03:24:07 11 and this nation. And I know I failed my family. I  
03:24:10 12 know I failed this country. I definitely see the error  
03:24:13 13 in my actions, and I understand. I just respectfully  
03:24:18 14 ask for leniency.

03:24:19 15 I have no excuse for the violation over  
03:24:23 16 Christmas. I was with my family. I thought we were  
03:24:27 17 having a great time. I was planning to stay until the  
03:24:30 18 27th. The 26th my wife is, like: I'm taking them to  
03:24:35 19 my sister-in-law's, and they want to spend the night and  
03:24:38 20 play with their cousins. So I was pretty much standing  
03:24:41 21 there; I said: All right. And the only other friend  
03:24:43 22 that I have that I can really confide in and talk to,  
03:24:46 23 Ms. Pruitt, I went down there and talked to her. And I  
03:24:49 24 regret my actions, and I have no excuse, ma'am.

03:24:53 25 I basically just plea that I can continue

03:24:56 1 with my responsibilities as a father to provide and work  
03:25:01 2 for my kids so I can help pay, not only for their school  
03:25:04 3 and half their medical bills, but my family depends on  
03:25:08 4 that, and I really want to be there for my kids. So  
03:25:12 5 that way, especially my oldest, who has mental health  
03:25:16 6 and medical issues, me being there as a support figure,  
03:25:21 7 even though I know that I've failed, but I want to  
03:25:23 8 rebuild that trust and rebuild that so I can help  
03:25:26 9 alleviate some of the stress from my wife and be a part  
03:25:29 10 of their family and try to help them go to games. He's  
03:25:34 11 really good at soccer, and he always wants me to play  
03:25:37 12 with him.

03:25:39 13               You know, moving forward, if granted a  
03:25:41 14 non-active sentence, my plan is to continue to work. I  
03:25:45 15 plan to continue to be a better individual and show this  
03:25:48 16 country and this nation that I can be better. I will  
03:25:52 17 be able to provide for my family. I plan on moving  
03:25:55 18 closer to Burlington so I can support my family better,  
03:26:00 19 especially with being able to pick up and take my kids  
03:26:02 20 to school. I plan to look for better employment. I'm  
03:26:06 21 going to stay where I am now just because I don't want  
03:26:08 22 to -- until I find a better job, which I plan on doing.

03:26:12 23               And I know that having a felony limits my  
03:26:14 24 job opportunities, but it won't deter me from trying to  
03:26:17 25 find something that will help support my family better

03:26:20 1 than what I'm getting right now.

03:26:27 2 THE COURT: Okay. Well, it was a big leap  
03:26:31 3 of faith on the part of this Court to allow you to be  
03:26:34 4 released. I think there certainly were some surprises  
03:26:42 5 along the way. But I'm sure that time has been  
03:26:52 6 valuable to you and your family to have your presence in  
03:26:55 7 their lives very directly while these cases wound their  
03:27:01 8 way through court and combined.

03:27:08 9 What's missing here from a lot of what I've  
03:27:11 10 heard from the defense side particularly is the nature  
03:27:16 11 and harm of this offense.

03:27:23 12 Leaving the attempted destruction of the  
03:27:28 13 ill-gotten gains to the side, no doubt this course of  
03:27:33 14 conduct has resulted in probably, one could say,  
03:27:39 15 necessary changes to the way the government disposes of  
03:27:44 16 property, and that no doubt has increased the  
03:27:50 17 transactional costs of doing that, to make sure the  
03:27:57 18 property goes where it's appropriate, not to someone  
03:28:02 19 like you. And so who pays for that? Well, the  
03:28:09 20 taxpayers pay for that.

03:28:12 21 And there certainly is a difficulty in  
03:28:16 22 prosecuting these types of cases. They're probably  
03:28:20 23 pretty hard to detect. And there's been an incredible  
03:28:24 24 amount of effort and time into this prosecution. And  
03:28:28 25 you've certainly made it more difficult by your actions.



03:28:38 1 And I wonder about what you did to the  
03:28:42 2 command chain. It sounds from reading the memorandum  
03:28:45 3 that you -- again, it's "the motives were good, but the  
03:28:51 4 actions were wrong." Well, that's just a self-serving  
03:28:55 5 justification here repeatedly by you of conduct that is  
03:29:03 6 illegal, illicit, inappropriate. And I just wonder  
03:29:09 7 about you buying the approval and loyalty of those in  
03:29:15 8 the military by getting them things. I just wonder:  
03:29:24 9 At whose expense? The command chain? I think this  
03:29:30 10 type of conduct, to have somebody within the military  
03:29:33 11 doing this, must be very undermining of basically our  
03:29:38 12 national defense.

03:29:42 13 So the harm here is significant, and the  
03:29:46 14 need to promote respect for the law is immense, and the  
03:29:49 15 need to protect the public from people like you is  
03:29:53 16 great.

03:29:56 17 Now, that is not to take away from your  
03:29:59 18 service, your very honorable service in the military  
03:30:06 19 that precedes this. I want to recognize that.

03:30:16 20 But a noncustodial sentence does not  
03:30:19 21 accurately reflect the factors in 18, United States  
03:30:26 22 Code, Section 3553. Basically it would be a broadcast  
03:30:33 23 that you can do this, and you can get away with it, to  
03:30:39 24 some extent.

03:30:44 25 So all things considered, taking into

03:30:47 1 consideration the good and the bad of your background  
03:30:50 2 and your history, and the other factors, I think the  
03:30:57 3 guideline range is too high, and I do come down from it  
03:31:05 4 for two reasons: I come down from it because of the  
03:31:10 5 mental health issues, and I come down from it in  
03:31:15 6 recognition of your service to this country honorably.

03:31:23 7 But three years is what you're going to  
03:31:25 8 serve, 36 months. That's a sentence that's sufficient  
03:31:28 9 but not more than what it needs to be, all things  
03:31:31 10 considered.

03:31:33 11 And then you're going to be supervised for  
03:31:35 12 three years. And you know, I tell defendants, one of  
03:31:41 13 the things you've got to do is be honest and truthful in  
03:31:44 14 all of your dealings with your probation officer. I  
03:31:46 15 tell defendants when I sentence them: You know,  
03:31:49 16 sometimes I see people for supervised release issues on  
03:31:53 17 a revocation motion not because of what they did, but  
03:31:59 18 because they lied about it. And you're just the  
03:32:02 19 perfect example of that. If you had been honest and  
03:32:06 20 truthful, your going to Raleigh and staying with Ms.  
03:32:13 21 Pruitt really might not have been a big deal, or as big  
03:32:19 22 a deal as it became when you said: Oh, I was at home.  
03:32:23 23 Remember that when you're being supervised. Don't do  
03:32:27 24 that again. Be truthful and honest.

03:32:30 25 But let me start with the mandatory

03:32:32 1 conditions. You can't break any law; you can't possess  
03:32:35 2 a weapon; you can't possess drugs.

03:32:37 3 The standard conditions. I've spoken of one  
03:32:40 4 of them: Be honest in your dealings with your probation  
03:32:43 5 officer. Here's another one that you've played with:  
03:32:46 6 Don't go some place, don't live some place, don't move  
03:32:50 7 some place where your probation officer doesn't know  
03:32:56 8 you're going. Okay.

03:32:59 9 Work full-time. You're motivated to do  
03:33:02 10 that. You've done a good job in the hardware store, and  
03:33:05 11 I'm sure that was difficult at times. We've had some  
03:33:08 12 issues along the way with your relationship with your  
03:33:11 13 third-party custodian, and I can certainly say I've  
03:33:14 14 worried about that. But you can work hard, and that is  
03:33:18 15 to your credit.

03:33:23 16 And then the special conditions for you:  
03:33:27 17 Mental health treatment. And I'm going to put on the  
03:33:32 18 judgment that's not an option; that's not as directed by  
03:33:37 19 the probation office; that's as required by this Court.  
03:33:42 20 And then you and your probation officer figure out how  
03:33:46 21 to get the best mental health treatment. But clearly  
03:33:49 22 that's a priority for you.

03:33:51 23 And supporting your dependents.

03:33:53 24 And then because of the nature and  
03:33:57 25 circumstances of what's brought you in this room, you're

03:34:00 1 going to have to agree to warrantless searches of your  
03:34:03 2 car, your person, by law enforcement or by the probation  
03:34:07 3 office, if there's a reasonable suspicion to think  
03:34:10 4 you're breaking the law or violating supervised release  
03:34:12 5 conditions, or if it's necessary for your probation  
03:34:15 6 officer, as sometimes it is, to search in the regular  
03:34:19 7 course of that officer's supervisory responsibilities.

03:34:27 8 I don't think you're a drug user. I'm  
03:34:30 9 going to suspend that testing condition.

03:34:35 10 I know you can't pay a fine. I'm not going  
03:34:37 11 to make you pay a fine.

03:34:39 12 A \$100 special assessment.

03:34:41 13 I'm going to dismiss those other counts  
03:34:44 14 against you.

03:34:48 15 And I'm going to recommend you to Butner or  
03:34:52 16 as close to North Carolina as possible.

03:34:54 17 I'm going to recommend that the Bureau  
03:34:56 18 undertake a comprehensive mental health assessment of  
03:35:00 19 you when you come into its custody and control. I'm  
03:35:04 20 recommending you for mental health treatment while  
03:35:07 21 you're in its custody and control. And I'm  
03:35:12 22 recommending you for further education and vocational  
03:35:15 23 training.

03:35:18 24 You can move past this. You've got to do a  
03:35:21 25 lot of deep soul searching with some professional help

03:35:24 1 to do that. And we all want you to succeed.

03:35:36 2 The order of forfeiture will be entered that  
03:35:42 3 the defendant personally obtained at least \$586,371.79  
03:35:51 4 in proceeds from the offense.

03:35:57 5 Before I impose this finally, from the  
03:36:00 6 probation office's side of the room, are there any  
03:36:05 7 changes recommended to comply with relevant sentencing  
03:36:07 8 law?

03:36:07 9 THE PROBATION OFFICER: No, Your Honor.

03:36:08 10 THE COURT: Ms. Kocher?

03:36:09 11 MS. KOCHER: No, Your Honor.

03:36:10 12 THE COURT: Counsel?

03:36:10 13 MS. BRENNAN: Your Honor, the only thing we  
03:36:12 14 would ask to add is, while he's in custody, substance  
03:36:16 15 abuse treatment due to the prior alcohol addiction.

03:36:22 16 THE COURT: Remind me about the alcohol  
03:36:25 17 addiction.

03:36:26 18 MS. BRENNAN: Your Honor, he had a problem  
03:36:27 19 with alcohol up until about 2017. He quit drinking  
03:36:31 20 because it had gotten a little out of hand.

03:36:33 21 THE COURT: That's right. He stopped cold  
03:36:35 22 turkey because his wife said this is causing problems.

03:36:37 23 MS. BRENNAN: He did. And then he used  
03:36:40 24 again in February of '22. So he did, when things sort  
03:36:43 25 of hit the fan, he used again. So if the Court

03:36:48 1 wouldn't mind. Also that might avail him to additional  
03:36:51 2 types of mental health treatment.

03:36:53 3 THE COURT: And it might take a year off his  
03:36:55 4 sentence. All right. I'll go ahead and add that, the  
03:36:58 5 most intensive treatment program for addiction or  
03:37:01 6 dependency.

03:37:04 7 But now that we've brought this up, let me  
03:37:06 8 add some supervised release conditions. You can't  
03:37:09 9 drink alcohol. You can't go to bars. You can't be  
03:37:12 10 around people who are drinking alcohol. You can't have  
03:37:15 11 medicine with alcohol in it unless it's been prescribed  
03:37:19 12 by a licensed physician. You might have an alcohol  
03:37:22 13 monitor hooked up to your car. You're going to be  
03:37:25 14 tested for alcohol use. Testing/treatment as required  
03:37:29 15 with any monitoring devices as deemed appropriate.

03:37:33 16 Thank you for reminding me of that. It  
03:37:41 17 probably goes hand in hand with some other things. So,  
03:37:45 18 yes.

03:37:47 19 You can appeal if you think something is  
03:37:51 20 really wrong with your conviction or the sentence, but  
03:37:53 21 you do need to move quickly.

03:37:57 22 And I would like to note on the record that  
03:37:59 23 if I got it wrong with how I ruled on these objections  
03:38:07 24 that I would have come -- and really, frankly, did  
03:38:11 25 come to the conclusion that 36 months is appropriate

03:38:18 1 with regard to 18, United States Code, Section 3553.

03:38:22 2 The Guidelines were challenged by this case. The Court

03:38:28 3 was challenged by this case. But I would have come to

03:38:31 4 the exact same sentence irrespective of the Guidelines.

03:38:36 5 Back to how you can appeal. You can appeal

03:38:39 6 if you think there's something really wrong with the

03:38:41 7 conviction or the sentence. You did enter into a plea

03:38:43 8 agreement. There were benefits in there. There were

03:38:46 9 waivers in there of your rights to appeal. These

03:38:48 10 waivers are generally enforceable, but if you think

03:38:52 11 they're not, there's an opportunity to present that

03:38:54 12 theory to the Fourth Circuit; 14 days.

03:39:00 13 If you can't afford the cost of an appeal,

03:39:02 14 you can apply for permission to appeal for free. And if

03:39:05 15 you request, Ms. Castania will fill out the appeal

03:39:08 16 paperwork for you. Though I know Ms. Brennan will, and

03:39:11 17 she would acknowledge that she would file a notice of

03:39:13 18 appeal if you told her to.

03:39:15 19 Now, I think your client needs to come into

03:39:18 20 custody, so I'm asking the Marshals to take him now.

03:39:20 21 MS. BRENNAN: Your Honor, if I may, he drove

03:39:22 22 here.

03:39:25 23 THE COURT: Well, somebody's going to have

03:39:27 24 to drive it back.

03:39:30 25 All right. Into custody.

03:39:34 1 And maybe he can give his keys to somebody.

03:39:39 2 MS. BRENNAN: You wouldn't give him 24 hours  
03:39:42 3 to report to get home and get his car back and report to  
03:39:48 4 the marshals there?

03:39:49 5 THE COURT: No.

6 (Concluded at 2:23 p.m.)

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9 **C E R T I F I C A T E**

10

11 I certify that the foregoing is a correct transcript  
12 from the record of proceedings in the above-entitled  
13 matter.

14

15 /s/ Tracy L. McGurk\_\_\_\_\_

\_\_\_\_4/7/2023\_\_\_\_

16 Tracy L. McGurk, RMR, CRR

Date

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